MONTANA LEGISLATIVE HISTORY

Chapter 350 1995

Bill H _____ S 278 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3-7	✓ C	Hearing Date(s)	2-3	✓ C
		C		2-7	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

3/13	TRANSMITTED TO GOVERNOR		
3/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 147		
	EFFECTIVE DATE: 01/01/96		

SB 276 INTRODUCED BY WATERMAN

MAKE IT A CRIMINAL OFFENSE FOR A PERSON TO ALLOW A MINOR INTO OR FOR A MINOR TO ENTER OR REMAIN IN A ROOM OR OTHER PART OF A PREMISES IF A LIVE CARD GAME, LIVE BINGO, LIVE KENO, OR VIDEO GAMBLING (EXCEPT THAT ALLOWED UNDER SECTION 23-5-611(1)(B), MCA) OCCURS IN THAT ROOM OR THAT PART OF THE PREMISES

1/31	INTRODUCED		
1/31	FIRST READING		
1/31	REFERRED TO JUDICIARY		
2/01	FISCAL NOTE REQUESTED		
2/04	FISCAL NOTE RECEIVED		
2/06	FISCAL NOTE PRINTED		
2/09	HEARING		
2/13	COMMITTEE REPORT—BILL NOT PASSED AS AMENDED		
2/14	ADVERSE COMMITTEE REPORT ADOPTED	42	7

SB 277 INTRODUCED BY L. NELSON, ET AL.

ALLOW A FARM MUTUAL INSURER TO INSURE PROPERTY WITHIN AN INCORPORATED CITY OR TOWN WITH A POPULATION OF LESS THAN 15,000 AND ALLOW COVERAGE TO CONTINUE EVEN IF THE POPULATION OF THE INCORPORATED CITY OR TOWN MEETS OR EXCEEDS 15,000

1/31	INTRODUCED		
1/31	FIRST READING		
1/31	REFERRED TO LOCAL GOVERNMENT		
2/14	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/16	2ND READING PASSED	50	0
2/17	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/10	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/13	2ND READING CONCURRED	90	6
3/14	3RD READING CONCURRED	93	6
	RETURNED TO SENATE WITH AMENDMENTS		
3/18	2ND READING AMENDMENTS CONCURRED	46	0
3/20	3RD READING AMENDMENTS CONCURRED	50	0
3/25	SIGNED BY PRESIDENT		
3/25	SIGNED BY SPEAKER		
3/27	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 281		
	EFFECTIVE DATE: 10/01/95		

SB 278 INTRODUCED BY BROOKE, ET AL.

GENERALLY REVISE LAWS RELATING TO DOMESTIC VIOLENCE

1/31	INTRODUCED		
1/31	FIRST READING		
1/31	REFERRED TO JUDICIARY		
2/01	FISCAL NOTE REQUESTED		

2/03	HEARING		
2/06	FISCAL NOTE RECEIVED		
2/07	FISCAL NOTE PRINTED		
2/07	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	45	4
2/09	3RD READING PASSED	48	2
	TRANSMITTED TO HOUSE		
2/10	FIRST READING		
2/15	REFERRED TO JUDICIARY		
3/07	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/27	2ND READING CONCURRED	98	0
3/28	3RD READING CONCURRED	95	0
	RETURNED TO SENATE		
4/06	SIGNED BY PRESIDENT		
4/06	SIGNED BY SPEAKER		
4/06	TRANSMITTED TO GOVERNOR		
4/10	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 350		
	EFFECTIVE DATE: 10/01/95		

SB 279 INTRODUCED BY L. NELSON, ET AL.

PROVIDE LEGISLATORS LIMITED REIMBURSEMENT FOR EXPENSES INCURRED BY LEGISLATORS AS A RESULT OF CONDUCTING LEGISLATIVE BUSINESS BY TELEPHONE WITH PERSONNEL OF STATE GOVERNMENT AGENCIES

1/31	INTRODUCED		
1/31	FIRST READING		
1/31	REFERRED TO STATE ADMINISTRATION		
2/01	FISCAL NOTE REQUESTED		
2/04	FISCAL NOTE RECEIVED		
2/04	FISCAL NOTE PRINTED		
2/08	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED		
2/09	2ND READING PASSED	28	20
2/10	3RD READING PASSED	30	19
	TRANSMITTED TO HOUSE		
2/13	FIRST READING		
2/15	REFERRED TO STATE ADMINISTRATION		
3/02	HEARING		
3/02	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

SB 280 INTRODUCED BY GROSFIELD

DEFINE "SAME SALARY" FOR PURPOSES OF TEACHER TENURE AS THE DAILY RATE OF PAY, EXCLUDING BENEFITS AND STIPENDS FOR NONTEACHING DUTIES, MULTIPLIED BY THE NUMBER OF DAYS WORKED UNDER THE LAST EXECUTED CONTRACT WITH THE TEACHER, UP TO 187 SCHOOL DAYS

1/31	INTRODUCED		
1/31	FIRST READING		
1/31	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/08	HEARING		
2/13	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE FOR 45TH DAY		
	DIED IN COMMITTEE		

SENATE BILL NO. 278

INTRODUCED BY Brooke Grimes Clark Feland Hargrove Eck Mangan Harding Bishop Lynch HART Cocchiarella McCulloch Larson Barnes Fenaroli Carey Mckee Gillan Crippa Lynda Ream Stang McKenzie Jacobson Doherty Cox Linda Lee Fuller Wanzenried Mumford

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DOMESTIC VIOLENCE; CHANGING THE NAME OF THE OFFENSE OF DOMESTIC ABUSE TO PARTNER OR FAMILY MEMBER ASSAULT; AUTHORIZING LOCAL GOVERNMENTS TO ESTABLISH MISDEMEANOR PROBATION OFFICES; PROVIDING FOR A NOTICE OF RIGHTS TO VICTIMS; AUTHORIZING THE SEIZURE OF WEAPONS BY A POLICE OFFICER IN A PARTNER OR FAMILY MEMBER ASSAULT SITUATION; REQUIRING HEALTH CARE PROVIDERS TO PROVIDE SUSPECTED VICTIMS WITH A NOTICE OF RIGHTS; PROVIDING FOR TEMPORARY ORDERS OF PROTECTION, ORDERS OF PROTECTION, AND A PROCEDURE FOR ISSUANCE OF THOSE ORDERS; AND AMENDING SECTIONS 3-10-301, 7-32-2227, 27-19-201, 27-19-316, 40-4-121, 40-4-123, 40-4-124, 40-4-217, 40-4-219, 45-5-206, 45-5-220, 45-5-626, 46-6-105, 46-6-311, 46-6-602, 46-9-302, AND 46-18-202, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in ~~subsection (2) and in~~ 3-11-103 and in subsection (2) of this section, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed $5,000, exclusive of court costs;

(b) in actions for damages not exceeding $5,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding $5,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed $5,000;

(e) in actions for a fine, penalty, or forfeiture not exceeding $5,000, imposed by a statute or an

ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed $5,000, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed $5,000, exclusive of court costs;

(h) to issue temporary restraining orders, as provided in 40-4-121~~(3)~~, and orders of protection, as provided in [sections 21 through 29].

(2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 2. Section 7-32-2227, MCA, is amended to read:

"**7-32-2227. Inmate eligibility for participation.** A person may be permitted to participate in a county jail work program if ~~he~~ the person:

(1) has been sentenced to the county jail for an offense and is not confined in the county jail upon process in a civil action or prior to examination or trial;

(2) is not serving a sentence for homicide, robbery, sexual intercourse without consent, arson, burglary, kidnapping, escape, assault, ~~domestic abuse~~ partner or family member assault, incest, or any other offense in which violence is an element of the crime or for an offense during the course of which bodily injury occurred;

(3) was not prohibited from participating in the county work program by the sentencing judge, magistrate, or justice of the peace~~,~~ or ~~his~~ by the judge's, magistrate's, or justice's successor; and

(4) has applied to participate to the county sheriff and the sheriff, pursuant to written policy, has approved the participation."

Section 3. Section 27-19-201, MCA, is amended to read:

"**27-19-201. When preliminary injunction may be granted.** An injunction order may be granted in the following cases:

(1) when it ~~shall appear~~ appears that the applicant is entitled to the relief demanded and ~~such~~ the relief or any part ~~thereof~~ of the relief consists in restraining the commission or continuance of the act

complained of, either for a limited period or perpetually;

(2) when it ~~shall appear~~ appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;

(3) when it ~~shall appear~~ appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

(4) when it appears that the adverse party, during the pendency of the action, threatens or is about to remove or to dispose of ~~his~~ the adverse party's property with intent to defraud the applicant, an injunction order may be granted to restrain the removal or disposition;

(5) when it appears that the applicant has ~~suffered or may suffer physical abuse~~ applied for an order under the provisions of 40-4-121 or an order of protection under [sections 21 through 29]."

Section 4. Section 27-19-316, MCA, is amended to read:

"27-19-316. Contents and filing of restraining order granted without notice. Each temporary restraining order granted without notice must:

(1) be endorsed with the date and hour of its issuance;

(2) be filed immediately in the clerk's office and entered in the record;

(3) define the injury and state why ~~such~~ the injury is irreparable and why the order was granted without notice; and

(4) except as provided in 40-4-121 or [sections 21 through 29], expire by its terms within ~~such~~ the time after entry, not to exceed 10 days, as the court or judge fixes."

Section 5. Section 40-4-121, MCA, is amended to read:

"40-4-121. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court ~~which~~ that lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion must be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion

accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property, except in the usual course of business or for the necessities of life, and, if so restrained, requiring the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any family member or from stalking, as defined in 45-5-220;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court;

(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment; ~~and~~

(f) providing other injunctive relief proper in the circumstances; and

(g) providing additional relief available under [sections 21 through 29].

(3) A person may seek the relief provided for in subsection (2) without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

~~(a) (i) alleging physical abuse, harm, or bodily injury against the petitioner by a family member or partner or the threat of physical abuse, harm, or bodily injury against the petitioner by a family member or partner that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat; or~~

~~(ii) alleging a violation of 45-5-220; and~~

~~(b)~~ requesting relief under Title 27, chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate. ~~Persons who may request relief under this subsection include family members, partners, and persons alleging a violation of 45-5-220.~~

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) At the time of the hearing, the court shall determine whether good cause exists for the injunction to continue for 1 year.

~~(7) If the court determines, on the basis of a party's history of violence and the testimony presented at the hearing or on the basis of credible evidence that a party has violated 45-5-220, that the other party needs permanent protection or may otherwise suffer permanent injury or harm, the court may order that the injunction be effective permanently.~~

~~(8) A permanent injunction may be issued by a district court with jurisdiction over the parties to a dissolution proceeding upon presentation of evidence of a party's history of violence showing that the other party may suffer permanent injury or harm if a permanent injunction is not issued. A permanent injunction may also be issued enjoining a party from stalking upon presentation of credible evidence that the party has violated 45-5-220 if the court determines that the stalked party needs permanent protection.~~

~~(9) Except when the alleged conduct to be restrained is a violation of 45-5-220, restraining orders issued under this section may restrain the petitioner's actions only if the court finds that the petitioner, in addition to the respondent, has engaged in abusive or assaultive behavior as described by subsection (3)(a).~~

~~(10)~~(7) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

~~(11)~~(8) A temporary order or injunction ~~or permanent injunction~~, entered pursuant to this section or [sections 21 through 29]:

(a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208 ~~or order under Title 27, chapter 19, part 3, as appropriate~~;

(b) terminates upon order of the court or when the petition is voluntarily dismissed; and

(c) when issued under this section, must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-220 or 45-5-626."

~~(12)~~(9) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld except by order of the court for good cause shown.

~~(13) As used in this section, the following definitions apply:~~

~~(a) "Bodily injury" means physical pain, illness, or any impairment of physical condition and~~

~~includes mental illness or impairment.~~

~~(b) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.~~

~~(c) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.~~"

Section 6. Section 40-4-123, MCA, is amended to read:

"**40-4-123. Jurisdiction and venue.** (1) District courts, municipal courts, justices' courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-4-121~~(3)~~.

(2) The municipal judge, justice of the peace, or city court judge shall on motion suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage~~,~~ or for child custody is pending between the parties. From the time of the certification of ~~such~~ the pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced ~~therein~~ in district court.

(3) An action brought under 40-4-121~~(3)~~ may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse."

Section 7. Section 40-4-124, MCA, is amended to read:

"**40-4-124. Review or removal -- district court.** (1) An order issued by a municipal court, ~~justice~~ justice's court, or city court pursuant to 40-4-121~~(3)~~ is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court, ~~justice~~ justice's court, or city court made pursuant to 40-4-121~~(3)~~.

(2) Any case in which an order has been issued by a municipal court, ~~justice~~ justice's court, or city court pursuant to 40-4-121~~(3)~~ may be removed to district court upon filing of a notice of removal."

Section 8. Section 40-4-217, MCA, is amended to read:

"40-4-217. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; ~~but~~ however, the court may not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health or unless the provisions of subsection (6) apply.

(4) So long as a noncustodial parent who has visitation rights under a decree or a custody agreement remains a resident of this state, a resident custodial parent shall, before changing the child's residence to another state and unless the noncustodial parent has given written consent, give written notice to the noncustodial parent, as provided in subsection (5).

(5) The written notice required by subsection (4) must be served personally or given by certified mail not less than 30 days before the proposed change in residence. Proof of service must be filed with the court that issued the custody order. The purpose of the notice is to allow the noncustodial parent to seek a modification of ~~his~~ the parent's visitation schedule.

(6) (a) If a noncustodial parent has been convicted of any of the crimes listed in subsection (6)(c), the custodial parent or any other person who has been granted custody of the child pursuant to court order may file an objection to visitation with the court. The custodial parent or other person having custody shall give notice to the noncustodial parent of the objection as provided by the Montana Rules of Civil Procedure, and the noncustodial parent ~~shall have~~ has 20 days from the notice to respond. If the noncustodial parent fails to respond within 20 days, the visitation rights of the noncustodial parent are suspended until further order of the court. If the noncustodial parent responds and objects, a hearing must be held within 30 days of the response.

(b) The noncustodial parent has the burden at the hearing to prove that visitation by the noncustodial parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of visitation is not in the best interest of the child.

(c) This subsection (6) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) incest, as described in 45-5-507;

(vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(vii) endangering the welfare of children, as described in 45-5-622;

(viii) ~~domestic abuse~~ partner or family member assault of the type described in 45-5-206(1)(a);

(ix) sexual abuse of children, as described in 45-5-625."

Section 9. Section 40-4-219, MCA, is amended to read:

"**40-4-219. Modification.** (1) The court may in its discretion modify a prior custody decree if it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or ~~his~~ the child's custodian and that the modification is necessary to serve the best interest of the child and if it further finds that:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian;

(c) the child's present environment endangers seriously ~~his~~ the child's physical, mental, moral, or emotional health and that the harm likely to be caused by a change of environment is outweighed by its advantages to ~~him~~ the child;

(d) the child is 14 years of age or older and desires the modification;

(e) the custodian willfully and consistently:

(i) refuses to allow the child to have any contact with the noncustodial parent; or

(ii) attempts to frustrate or deny the noncustodial parent's exercise of visitation rights; or

(f) the custodial parent has changed or intends to change the child's residence to another state.

(2) A court may modify a de facto custody arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume the custodian is not acting in the child's best interest if the custodian

does any of the acts specified in subsection (1)(e) or (8).

(4) The court may modify the prior decree based on subsection (1)(f) to provide a new visitation schedule and to apportion transportation costs between the parents.

(5) Attorney fees and costs ~~shall~~ must be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(6) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

(7) As used in this section, "prior custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding.

(8) (a) If a parent has been convicted of any of the crimes listed in subsection (8)(c), the other parent or any other person who has been granted custody of the child pursuant to court order may file an objection to the current custody order with the court. The parent or other person having custody shall give notice to the convicted parent of the objection as provided by the Montana Rules of Civil Procedure, and the convicted parent ~~shall have~~ has 20 days from the notice to respond. If the convicted parent fails to respond within 20 days, the custody rights of the convicted parent are suspended until further order of the court. If the convicted parent responds and objects, a hearing must be held within 30 days of the response.

(b) The convicted parent has the burden at the hearing to prove that custody by the convicted parent does not seriously endanger the child's physical, mental, moral, or emotional health and that the modification of custody is not in the best interest of the child.

(c) This subsection (8) applies to the following crimes:

(i) deliberate homicide, as described in 45-5-102;

(ii) mitigated deliberate homicide, as described in 45-5-103;

(iii) sexual assault, as described in 45-5-502;

(iv) sexual intercourse without consent, as described in 45-5-503;

(v) incest, as described in 45-5-507;

(vi) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);

(vii) endangering the welfare of children, as described in 45-5-622;

(viii) ~~domestic abuse~~ partner or family member assault of the type described in 45-5-206(1)(a);

(ix) sexual abuse of children, as described in 45-5-625."

Section 10. Section 45-5-206, MCA, is amended to read:

"**45-5-206.** ~~**Domestic abuse**~~ **Partner or family member assault -- penalty.** (1) A person commits the offense of ~~domestic abuse~~ partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a ~~family member or~~ partner or family member;

(b) negligently causes bodily injury to a ~~family member or~~ partner or family member with a weapon ~~during or in connection with a quarrel, fight, or abusive behavior~~; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member ~~or partner~~. ~~The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused must be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or partner, whether or not the offender believes the firearm to be loaded.~~

(2) For the purposes of 46-6-311, [sections 21 through 29], and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) ~~"Partner"~~ "Partners" means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) ~~A person~~ An offender convicted of ~~domestic abuse for the first or second time~~ partner or family member assault shall be fined not ~~to exceed~~ less than $100 or more than $1,000 ~~or~~ and be imprisoned in the county jail not to exceed 1 year~~, or both~~ or not less than 24 hours for a first offense. An offender convicted of a second offense under this section shall be fined not less than $300 or more than $1,000 and be imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in [section 18]. On a third or subsequent conviction for ~~domestic abuse~~ partner or family member assault, the ~~person convicted~~ offender shall be fined not less than $500 and not more than $50,000 and be imprisoned in the county jail or in the state prison for a term not less than ~~10~~ 30 days and not more than 5 years, or both.

(b) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or in another state for a violation of a similar statute, which forfeiture has not been vacated.

(4) (a) ~~A person~~ An offender convicted of ~~domestic abuse~~ partner or family member assault shall be required to pay for and complete ~~at least 6 months of counseling, totaling at least 25 hours~~ a counseling assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow through on all recommendations made by the counseling provider. The counselor must be approved by the court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling, in addition to the assessment. The assessment and the counseling must be:

(i) with a person licensed under Title 37, chapter ~~3,~~ 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the ~~convicted person~~ offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the ~~convicted person~~ offender in other appropriate treatment if the court determines that there is no available treatment program directed to the violent conduct of the ~~convicted person~~ offender.

~~(c) Upon completion of the minimum counseling requirements, the counselor shall notify the court that the defendant has completed the minimum counseling requirements and shall provide the court with a recommendation as to whether or not the defendant requires additional counseling. Upon recommendation of the counselor and direction of the court, the defendant may be required to pay for and complete additional counseling or treatment, such as chemical dependency treatment, or both.~~

~~(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court.~~

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs in addition to required counseling and fines.

(6) In addition to the requirements of subsection (5), if financially able, the offender shall be

ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender charged or convicted under this section from possession or use of a firearm. The court may revoke the offender's concealed weapon permit, if one was issued under 45-8-321, for the duration of the sentence.

(8) At the time of sentencing, the court shall provide an offender a written copy of the offender's sentence."

Section 11. Section 45-5-220, MCA, is amended to read:

"45-5-220. Stalking -- exemption -- penalty. (1) A person commits the offense of stalking if the person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

(a) following the stalked person; or

(b) harassing, threatening, or intimidating the stalked person, in person or by phone, by mail, or by other action, device, or method.

(2) This section does not apply to a constitutionally protected activity.

(3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed $1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed $10,000, or both. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(4) Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in ~~40-4-121~~ [sections 21 through 29], restraining a person from engaging in the activity described in subsection (1).

(5) For the purpose of determining the number of convictions under this section, "conviction" means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been

vacated.

(6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person."

Section 12. Section 45-5-626, MCA, is amended to read:

"45-5-626. Violation of ~~protective~~ order of protection ~~misdemeanor~~. (1) A person commits the offense of violation of ~~a protective~~ an order of protection if ~~he~~ the person, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-121 or an order of protection under [sections 21 through 29]. It may be inferred that the defendant had knowledge of an order at the time of an offense if the defendant had been served with the order before the time of the offense. Service of the order is not required upon a showing that the defendant had knowledge of the order and its content.

(2) Only the respondent under an order of protection may be cited for a violation of the order. The petitioner who filed for an order of protection may not be cited for a violation of that order of protection.

~~(2)~~(3) ~~A person~~ An offender convicted of violation of ~~a protective~~ an order of protection shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a first offense. Upon conviction for a second offense, an offender shall be fined not less than $200 and not more than $500 and be imprisoned in the county jail not less than 24 hours and not more than 6 months. Upon conviction for a third or subsequent offense, an offender shall be fined not less than $500 and not more than $2,000 and be imprisoned in the county jail or state prison for a term not less than 10 days and not more than 2 years."

Section 13. Section 46-6-105, MCA, is amended to read:

"46-6-105. Time of making arrest. An arrest may be made at any time of the day or night, except that a person may not be arrested in the person's home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a judge endorsed upon an arrest warrant. However, a person may be arrested in the person's home or private dwelling at night if the person is being arrested pursuant to 46-6-311 for the offense of ~~domestic abuse~~ partner or family member assault."

Section 14. Section 46-6-311, MCA, is amended to read:

"**46-6-311. Basis for arrest without warrant.** (1) A peace officer may arrest a person when a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) The summoning of a peace officer to a place of residence by a ~~family member or~~ partner or family member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in ~~domestic abuse~~ partner or family member assault cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim."

Section 15. Section 46-6-602, MCA, is amended to read:

"**46-6-602. Notice of rights to victim ~~upon arrest~~ in ~~domestic violence situation~~ partner or family member assault.** Whenever a peace officer arrests a person for ~~domestic abuse~~ partner or family member assault, as defined in 45-5-206, ~~if the victim is present,~~ or responds to a call in which partner or family member assault is suspected, the officer, outside the presence of the offender, shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"~~IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the~~ The city or county attorney's office can file criminal charges against ~~your abuser~~ an offender if the offender committed the offense of partner or family member assault.

In addition to the criminal charges filed by the state of Montana, you are entitled to the following civil remedies:

You ~~have the right to~~ may go to court and file a petition requesting any of the following orders for relief:

(1) an order of protection ~~restraining your abuser~~ that prohibits the offender from ~~abusing~~ threatening to hurt you or hurting you;

(2) an order of protection ~~directing your abuser~~ that directs the offender to leave your ~~household~~ home and prohibits the offender from having any contact with you;

(3) an order of protection ~~preventing your abuser~~ that prevents the offender from transferring any property except in the usual course of business;

(4) an order ~~awarding you or the other parent custody of or visitation with a minor child or children~~ of protection that prohibits the offender from being within 1,500 feet or other appropriate distance of you, any named family member, and your worksite or other specified place;

~~(5) an order restraining your abuser from molesting or interfering with minor children in your custody or a family member or partner, as defined in 45-5-206; or~~

~~(6) an order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is a legal obligation to do so"~~

(5) an order of protection that gives you possession of necessary personal property;

(6) an order of protection that prohibits the offender from possessing or using any firearm.

If you file a petition in district court, the district court may order all of the above and may award custody of your minor children to you or to the other parent. The district court may order visitation of your children between the parents. The district court may order the offender to pay support payments to you if the offender has a legal obligation to pay you support payments.

The forms that you need to obtain an order of protection are at _____. You may call _____ at _____ for additional information about an order of protection.

You may file a petition in district court at _____.

You may be eligible for restitution payments from the offender (the offender would repay you for costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a fund administered by the state of Montana for innocent victims of crime). You may call _____ at _____ for additional information about restitution or crime victims compensation.

The following agencies may be able to give you additional information or emergency help. (List telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary of services that are available.)""

Section 16. Section 46-9-302, MCA, is amended to read:

"46-9-302. Bail schedule -- acceptance by peace officer. (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is ~~domestic abuse~~ partner or family member assault, ~~any assault against a family member or a partner,~~ as defined in 45-5-206, or stalking, as defined in 45-5-220.

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

Section 17. Section 46-18-202, MCA, is amended to read:

"**46-18-202. Additional restrictions on sentence.** (1) The ~~district~~ court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of the defendant's owning or carrying a dangerous weapon;

(c) restrictions on the defendant's freedom of association;

(d) restrictions on the defendant's freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving that term. If ~~such a~~ the restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment ~~shall~~ must contain a statement of the reasons for the restriction.

~~(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsection (1)(a).~~

~~(4)~~(3) When the ~~district~~ court imposes a sentence of probation as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition."

NEW SECTION. **Section 18. Misdemeanor probation offices -- officers -- costs.** (1) A local government may establish a misdemeanor probation office associated with a justice's court, municipal

court, or city court. The misdemeanor probation office shall monitor offenders for misdemeanor sentence compliance and restitution payments. An offender is considered a fugitive under the conditions provided in 46-23-1014.

(2) A local government may appoint misdemeanor probation officers and other employees necessary to administer this section. Misdemeanor probation officers:

(a) must have the minimum training required in 46-23-1003;

(b) shall follow the supervision guidelines required in 46-23-1011; and

(c) may order the arrest of an offender as provided in 46-23-1012.

(3) An offender who is convicted of the offense of partner or family member assault under 45-5-206 or of a violation of an order of protection under 45-5-626 and who is ordered to be supervised by misdemeanor probation must be ordered to pay for the cost of the misdemeanor probation. The actual cost of probation supervision over the offender's sentence must be paid by the offender unless the offender can show that the offender is unable to pay those costs. The costs of misdemeanor probation are in addition to any other fines, restitution, or counseling ordered.

NEW SECTION. **Section 19. Partner or family member assault -- seizure of weapon.** (1) A peace officer who responds to a call relating to partner or family member assault shall seize any weapon used or threatened to be used in the alleged assault.

(2) The responding officer may, as appropriate:

(a) take any action necessary to provide for the safety of a victim and any other member of the household;

(b) transport or arrange for the transportation of the victim and any other member of the household to a safe location; and

(c) assist a victim and any other member of the household to remove necessary personal items.

(3) A weapon seized under this section may not be returned to the offender until the return is ordered by the court.

NEW SECTION. **Section 20. Notice of rights when partner or family member assault is suspected.** (1) Whenever a patient seeks health care and the health care provider suspects that partner or family member assault has occurred, the health care provider, outside the presence of the suspected offender,

shall advise the suspected victim of the availability of a shelter or other services in the community and give the suspected victim immediate notice of any legal rights and remedies available. The notice must include furnishing the suspected victim with a copy of the following statement:

"The city or county attorney's office can file criminal charges against the offender if the offender committed the offense of partner or family member assault.

In addition to the criminal charges filed by the state of Montana, you are entitled to the civil remedies listed below.

You may go to court and file a petition requesting any of the following orders for relief:

(1) an order of protection that prohibits the offender from threatening to hurt you or hurting you;

(2) an order of protection that directs the offender to leave your home and prohibits the offender from having any contact with you;

(3) an order of protection that prevents the offender from transferring any property except in the usual course of business;

(4) an order of protection that prohibits the offender from being within 1,500 feet or other appropriate distance of you, any named family member, and your worksite or other specified place;

(5) an order of protection that gives you possession of necessary personal property;

(6) an order of protection that prohibits the offender from possessing or using any firearm.

If you file a petition in district court, the district court may order all of the above and may award custody of your minor children to you or the other parent. The district court may order visitation of your children between the parents. The district court may order the offender to pay support payments to you if the offender has a legal obligation to pay you support payments.

The forms that you need to obtain an order of protection are at _____. You may call _____ at _____ for additional information about an order of protection.

You may file a petition in district court at _____.

You may be eligible for restitution payments from the offender (the offender would repay you for costs that you have had to pay as a result of the assault) or for crime victims compensation payments (a fund administered by the state of Montana for innocent victims of crime). You may call _____ at _____ for additional information about restitution or crime victims compensation.

The following agencies may be able to give you additional information or emergency help. (List telephone numbers and addresses of agencies other than shelters with secret locations and a brief summary

of services that are available.)"

(2) Partner or family member assault may be suspected by health care workers in circumstances in which a patient repeatedly seeks health care for trauma type injuries or a patient gives an explanation for injuries that is not consistent with the injuries that are observed.

(3) For purposes of this section, "health care provider" has the meaning provided in 50-16-504.

NEW SECTION. **Section 21. Purpose.** *The purpose of [sections 21 through 29] is to promote the* safety and protection of all victims of partner and family member assault, victims of sexual assault, and victims of stalking.

NEW SECTION. **Section 22. Eligibility for order of protection.** (1) A person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-206;

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) unlawful restraint as defined in 45-5-301;

(viii) kidnapping as defined in 45-5-302;

(ix) aggravated kidnapping as defined in 45-5-303; or

(x) arson as defined in 45-6-103.

(2) A victim of stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503 is eligible for an order of protection against the offender regardless of the petitioner's relationship to the offender.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an

order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant.

NEW SECTION. **Section 23. Temporary order of protection.** (1) A petitioner may seek a temporary order of protection from a court listed in [section 27]. The petitioner shall file a sworn petition that states that the petitioner is in reasonable apprehension of bodily injury or is a victim of one of the offenses listed in [section 22], has a relationship to the respondent if required by [section 22], and is in danger of harm if the court does not issue a temporary order of protection immediately.

(2) Upon a review of the petition and a finding that the petitioner is in danger of harm if the court does not act immediately, the court shall issue a temporary order of protection that grants the petitioner appropriate relief. The temporary order of protection may include any or all of the following orders:

(a) prohibiting the respondent from threatening to commit or committing acts of violence against the petitioner and any designated family member;

(b) prohibiting the respondent from harassing, annoying, disturbing the peace of, telephoning, contacting, or otherwise communicating, directly or indirectly, with the petitioner, any named family member, any other victim of this offense, or a witness to the offense;

(c) prohibiting the respondent from removing a child from the jurisdiction of the court;

(d) directing the respondent to stay 1,500 feet or other appropriate distance away from the petitioner, the petitioner's residence, the school or place of employment of the petitioner, or any specified place frequented by the petitioner and by any other designated family or household member;

(e) removing and excluding the respondent from the residence of the petitioner, regardless of

ownership of the residence;

(f) prohibiting the respondent from possessing or using a firearm;

(g) prohibiting the respondent from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring the respondent to notify the petitioner, through the court, of any proposed extraordinary expenditures made after the order is issued;

(h) directing the transfer of possession and use of the residence, an automobile, and other essential personal property, regardless of ownership of the residence, automobile, or essential personal property, and directing an appropriate law enforcement officer to accompany the petitioner to the residence to ensure that the petitioner safely obtains possession of the residence, automobile, or other essential personal property or to supervise the petitioner's or respondent's removal of essential personal property;

(i) directing the respondent to complete violence counseling, which may include alcohol or chemical dependency counseling or treatment, if appropriate;

(j) directing other relief considered necessary to provide for the safety and welfare of the petitioner or other designated family member.

(3) If the petitioner has fled the parties' residence, notice of the petitioner's new residence must be withheld, except by order of the court for good cause shown.

(4) The court may, without requiring prior notice to the respondent, issue an immediate temporary order of protection for up to 20 days if the court finds, on the basis of the petitioner's sworn petition or other evidence, that harm may result to the petitioner if an order is not issued before the 20-day period for responding has elapsed.

NEW SECTION. **Section 24. Order of protection -- hearing.** (1) A hearing must be conducted within 20 days from the date the court issues a temporary order of protection. At the hearing, the court shall determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent.

(2) The respondent may request an emergency hearing before the end of the 20-day period by filing an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An emergency hearing must be set within 3 working days of the filing of the affidavit.

(3) The order of protection may not be made mutually effective by the court. The respondent may

obtain an order of protection from the petitioner only by filing an application for an order of protection and following the procedure described in [sections 21 through 29].

NEW SECTION. **Section 25. Attorney general to provide forms.** The attorney general shall prepare uniform sample instructions, petition forms, and order forms for temporary orders of protection and for orders of protection. The attorney general shall distribute samples of the instructions, petitions, and forms to the clerk of the district court in each county and to justices', municipal, and city courts. The clerk of the district court, justices of the peace, and municipal and city court judges shall make forms available to the public at no charge.

NEW SECTION. **Section 26. Written orders of protection.** (1) The court may determine, on the basis of the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing, that, to avoid further injury or harm, the petitioner needs permanent protection. The court may order that the order of protection remain in effect permanently.

(2) In a dissolution proceeding, the district court may, upon request, issue either an order of protection for an appropriate period of time or a permanent order of protection.

(3) An order of protection may include all of the relief listed in [section 23], when appropriate.

(4) An order of protection may include restraining the respondent from any other named family member who is a minor. If this restriction is included, the respondent must be restrained from having contact with the minor for an appropriate time period as directed by the court or permanently if the court finds that the minor was a victim of abuse, a witness to abuse, or endangered by the environment of abuse.

(5) An order of protection issued under this section may continue for an appropriate time period as directed by the court or be made permanent under subsection (1), (2), or (4). The order may be terminated upon the petitioner's request that the order be dismissed.

(6) An order of protection must include a section that indicates whether there are any other civil or criminal actions pending involving the parties, a brief description of the action, and the court in which the action is filed.

(7) An amendment to a temporary order of protection or to an order of protection is effective only after it has been served in writing on the opposing party.

(8) There is no cost for service of an order of protection.

(9) Any temporary order of protection or order of protection must conspicuously bear the following:

"Violation of this order is a criminal offense under 45-5-220 or 45-5-626 and may carry penalties of up to $10,000 in fines and up to a 5-year jail sentence.

This order is issued by the court, and the respondent is forbidden to do any act listed in the order, even if invited by the petitioner or another person. This order may be amended only by further order of this court or another court that assumes jurisdiction over this matter."

NEW SECTION. **Section 27. Jurisdiction and venue.** (1) District courts, justices' courts, municipal courts, and city courts have concurrent jurisdiction to hear and issue orders under [section 23].

(2) When a divorce or custody action involving the parties is pending in district court, a person may file a petition for an order of protection in a justice's, municipal, or city court only if the district court judge assigned to that case is unavailable or if the petitioner, to escape further abuse, left the county where the abuse occurred. The petitioner shall provide a copy of relevant district court documents to the justice's, municipal, or city court, along with the petition. The justice of the peace, municipal court judge, or city court judge shall immediately certify the pleadings to the original district court after signing an order of protection under this subsection. If the district court is unable to conduct a hearing within 20 days of receipt of the certified pleadings, it may conduct a hearing within 45 days of the receipt.

(3) An action brought under [sections 21 through 29] may be filed in the county where the petitioner currently or temporarily resides, the county where the respondent resides, or the county where the abuse occurred. There is no minimum length of residency required to file a petition under [sections 21 through 29].

(4) The right to petition for relief may not be denied because the petitioner has vacated the residence or household to avoid abuse.

(5) An order of protection issued under this section is effective throughout the state. Courts and law enforcement officials shall give full faith and credit to all orders of protection issued within the state.

(6) A certified copy of an order of protection from another state, along with proof of service, may be filed in a Montana court with jurisdiction over orders of protection in the county where the petitioner resides. If properly filed in Montana, an order of protection issued in another state must be enforced in the same manner as an order of protection issued in Montana.

NEW SECTION. **Section 28. Appeal to district court.** (1) An order issued by a justice's court, municipal court, or city court pursuant to [section 23] is immediately reviewable by the district judge upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a justice's court, municipal court, or city court made pursuant to [section 23 or section 26].

(2) A case in which an order has been issued by a justice's court, municipal court, or city court pursuant to [section 23 or section 26] may be removed to district court upon filing of a notice of removal.

NEW SECTION. **Section 29. Registration of orders.** (1) The clerk of court, justice of the peace, municipal court judge, or city court judge shall, within 24 hours of receiving proof of service of an order under [section 23, section 26, or section 27], mail a copy of the order or any extension, modification, or termination of the order, along with a copy of the proof of service, to the appropriate law enforcement agencies designated in the order.

(2) Law enforcement agencies shall establish procedures, using an existing system for warrant verification, to ensure that peace officers at the scene of an alleged violation of an order of protection are informed of the existence and terms of the order.

NEW SECTION. **Section 30. Codification instruction.** (1) [Section 18] is intended to be codified as an integral part of Title 46, chapter 23, and the provisions of Title 46, chapter 23, apply to [section 18].

(2) [Section 19] is intended to be codified as an integral part of Title 46, chapter 6, part 6, and the provisions of Title 46, chapter 6, part 6, apply to [section 19].

(3) [Sections 20 through 29] are intended to be codified as an integral part of Title 40, and the provisions of Title 40 apply to [sections 20 through 29].

NEW SECTION. **Section 31. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 32. Code commissioner instruction.** Unless inconsistent with [sections 1 through 29], any reference in the Montana Code Annotated or in legislation enacted by the 1995

legislature to "domestic abuse" is changed to "partner or family member assault". The code commissioner shall conform internal references and grammar to these changes.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0278, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
A bill generally revising the laws relating to domestic violence; changing the name of the offense of domestic abuse to partner or family member assault; authorizing local governments to establish misdemeanor probation offices; providing for a notice of rights to victims; authorizing the seizure of weapons by a police officer in a partner or family member assault situation; requiring health care providers to provide suspected victims with a notice of rights; providing for temporary orders of protection, orders of protection, and a procedure for issuance of those orders.

ASSUMPTIONS:
Crime Control Division:

1. The Board of Crime Control will have to revise the computer program used by local law enforcement agencies to capture offense/arrest data as it relates to partner or family member assaults. Revising the computer program may cost $10,000.
2. The Board of Crime Control will have to revise the manual used in conjunction with the computer program for the capture of offense/arrest data. Rewriting the user manual, printing, and distribution may cost $1,500.
3. The Board of Crime Control will have to provide minimal training to users for the input/output of the data relating to partner or family member assault. Providing additional training may cost $1,500.
4. There is a possibility that the above revisions could be incorporated within the scope of the statewide criminal history record system improvement planning being initiated by a task force of the Board of Crime Control. There is also a possibility that the above costs could be covered by federal grant funds that are intended for future statewide criminal history record system improvement. Because the availability of grant funds specific to this purpose is not certain, the fiscal impact is shown as a general fund impact.

Department of Corrections and Human Services:

5. The bill should have no material impact on the size of the corrections population. The maximum penalties for the offenses defined in the bill were not increased nor were the preconditions for sentences weakened.
6. It is estimated that there will be no substantial impact on the corrections population for the violation of an order of protection.

Department of Family Services:

7. The bill will not change the duties or responsibilities of the department and will have no fiscal impact.

Department of Justice:

8. The Attorney General has previously drafted a pamphlet for orders of protection. It is assumed that the department can handle revisions in this bill with current department resources.

(continued)

Dave Lewis 2-4-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Vivian Brooke 2/7/95
VIVIAN BROOKE, PRIMARY SPONSOR DATE

Fiscal Note for SB0278, as introduced

SB 278

FISCAL IMPACT:

Crime Control Division:

	FY96 Difference	FY97 Difference
Expenditures:		
Operating Expenses	13,000	0
Funding:		
General Fund (01)	13,000	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
Several local law enforcement agencies have their own computer programs used to provide offense/arrest data to the Board of Crime Control. There is a possibility that the revisions in the domestic abuse statutes may result in increased costs relating to reprogramming these systems to comply with reporting requirements.
The overall impact on local law enforcement agencies, incarcerations in local detention centers, and court workloads, if any, is not subject to reasonable estimate.

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
	1/25	2/15	PASS AS AMENDED VOTE:		2/15
SB0241	BENEDICT, STEVE 1/25	2/10	PROHIBITED HANDGUN SALES IDENTIFICATION PROCEDURES TABLED ON 02/13 VOTE:		
SB0249	BISHOP, AL 1/26	2/10	ELIMINATE ELECTED POSITION OF CLERK OF SUPREME COURT; TRANSFER FUNCTIONS 2/13 PASS AS AMENDED VOTE:		2/13
SB0266	CRIPPEN, BRUCE 1/27	2/07	REVISE JUDICIAL SALARIES 2/13 PASS AS AMENDED VOTE:		2/13
SB0272	GROSFIELD, LORENTS 1/30	2/02	REVISE FILING REQUIREMENTS OF SURVIVING SPOUSE OF JOINT TENANCY 2/02 PASS AS AMENDED VOTE:		2/02
SB0276	WATERMAN, MIGNON 1/31	2/09	PROHIBIT MINORS WHERE VIDEO, KENO, BINGO, AND CARD GAME GAMBLING OCCURS 2/13 ADVERSE RPT ADOPT VOTE:		2/14
SB0278	BROOKE, VIVIAN 1/31	2/03	REVISE DOMESTIC VIOLENCE LAWS 2/07 PASS AS AMENDED VOTE:		2/07
SB0286	FRANKLIN, EVE 2/01	2/07	COURT-ORDERED COSTS AND COUNSEL FEES IN PATERNITY PROCEEDINGS 2/08 DO PASS VOTE:		2/08
SB0290	TVEIT, LARRY 2/01		REVISE DISCRIMINATION BASED ON SEX OR MARITAL STATUS FOR INSURANCE VOTE:	BUSINESS & LABOR	
SB0292	BROWN, BOB 2/02	2/10	WOMAN'S RIGHT TO KNOW CONCERNING ABORTION 2/14 PASS AS AMENDED VOTE:		2/14
SB0297	DOHERTY, STEVE 2/02	2/09	MANDATORY INSURANCE VIOLATIONS PENALTIES 2/09 DO PASS VOTE:		2/09
SB0308	ESTRADA, SHARON 2/04	2/16	CLARIFY THAT AWARD OF COSTS IN MOST CIVIL ACTIONS INCLUDES ATTY. FEES TABLED ON 02/16 VOTE:		
SB0314	HARGROVE, DON		PLAN FOR LAW ENFORCEMENT ACADEMY		

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 3, 1995, at 10:00 A.M.

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 26, SJR 10, SB 278
Executive Action: SB 200, SB 132, HB 26

EXECUTIVE ACTION ON SB 200

Discussion: **Valencia Lane** commented all parties have agreed to the amendments.

Motion/Vote: **SENATOR RIC HOLDEN MOVED TO AMEND SB 200.** The motion **CARRIED UNANIMOUSLY** on oral vote.

Discussion: **SENATOR LARRY BAER** stated the amendment was lengthy and he was concerned about the contents. Amendment 4, following line 16 on page 2, insert, "finally the legislature intends that the limited exemptions for secured creditors and fiduciaries that are clarified and granted by this legislation extend not only to liability asserted by governmental entities but also extend to

recently as 1960 the structure of the courts of appeals was adequate to the tasks assigned to them. This is no longer true today. To deny that serious problems exist in the federal intermediate appellate courts and that they are unlikely to become worst is to ignore the enormous increase in the number and complexity of cases that these courts must now decide. For Congress, the federal judiciary, and the legal profession to fail to act to meet these problems would be a serious failure of public responsibility. Doesn't Montana deserve to have a little higher turn around on appeals than we now see? There comes a time to quit studying and do something for the benefit of Montana. For 20 years she has been looking for a final disposition of a certain case that she has lived with since January 21, 1974. This case will be resolved in the not too distant future. Chief Justice Turnage reminded her in his address to the legislature that justice delayed is justice denied.

HEARING ON SB 278

Opening Statement by Sponsor:

SENATOR VIVIAN BROOKE, Senate District 33, Missoula, presented SB 278. Domestic violence is as old as civilization. It has only been recognized as a serious crime within the last few years. Family violence is the most widespread form of violence. It accounts for nearly half of acts of violent crime although thousands of incidents go unreported because the victim does not seek medical protection or police protection. It cost millions of dollars in health care expenses. It takes many forms and affects the entire family. Family violence affects persons of different races, ages, and socioeconomic groups. Data indicates that family violence occurs in both rural and urban areas. It results in numerous social ills. Most significantly, it threatens the stability of the family and teaches family members, especially children, that violence is acceptable.

Proponents' Testimony:

Judy Wang, Assistant City Attorney, Chair Missoula Family Violence Council, stated SB 278 has two major sections. The first section discusses victims protections. It moves orders, currently called Temporary Restraining Orders, from a subsection currently located in a marriage and divorce statute to their own section. It is their position that victim's protections shouldn't be in divorce statutes. The other major part of the proposal addresses the crime of violence within the family which is called domestic abuse. Their approach to that crime is to take everyone who deals with that crime more seriously and treat it like a crime in the way other crimes are treated in the state of Montana. This bill was drafted by a committee of people including a prosecutor, a legislator, victim advocates, family law attorneys and children's advocates. Some of the ideas which

became SB 278 began when a number of people had an opportunity to attend a national conference on domestic violence legislation. The first problem is the crime of violence within the family called domestic abuse. The problem with that name is that it doesn't sound like a crime. The proposal requests that they call orders of protection just that. The next section of the proposal suggests minimum penalties. Judge Harkin deals with only third offense offenders. He sees third offenders who have never had a significant fine or jail sentence and are puzzled by his get tough attitude on domestic violence because they didn't know they were committing an offense at all. Their proposal is that a first offense offender will be sentenced to at least 24 hours in jail and at least a $100 fine. A second offense offender will be sentenced to three days in jail and a $300 fine. They did not add language which stated the sentence could not be suspended. It is the committee's intent that the minimum penalties would be the standard. Given certain circumstances the minimum penalty could be suspended. They also suggested penalties for Orders of Protection currently called Temporary Restraining Orders. Currently restraining orders are not taken seriously by many offenders. Their proposal calls for a third offense Order of Protection violation to be a felony. Another section of the bill addresses victims who need protection who we currently aren't protecting. In the state of Montana, a woman who is raped by a stranger cannot get an order of protection. The only way she can get any protection from her offender is if criminal charges are filed and if the county attorney requests that a order be made upon the offender either as a part of sentencing or a condition of bail that the offender stay away from her and if the judge makes that order. If she does not wish to go ahead with the prosecution, there is absolutely no protection available for her in the state of Montana. A person who is raped and is very fearful of their offender is entitled to a order of protection from a judge to have them protected from further violence. Another section of the law which they are addressing is counseling. Currently they do require counseling upon conviction for an offender in our domestic abuse law. We don't require any assessment of the offender's problems before the counseling begins. They are requesting that the Notice of Rights be amended to reflect the other changes in the law and they are also asking health care workers who suspect that domestic violence has occurred with a patient also give a similar notice of rights. Orders of Protection aren't in their own section. Stalking victims, who may not even know their offender, must go to a divorce statute to get a restraining order. SB 278 allows local governments the discretionary authority to create misdemeanor probation offices. They are also asking that judges have the discretionary authority to place a foot restriction which would make it more fair and clear for both the victim and offender to know the rules. SB 278 states clearly that a restraining order or a relief protection is enforceable throughout the state. It states that there is one method to get a restraining order and all persons should follow that same. The method is to file a petition, a sworn affidavit, that you have been a victim of crime

have it reviewed by a magistrate. **Ms. Wang** presented the written testimony of Judge Doug Harkin, Dawson Deputy County Attorney Fred Unmack, Pam Anderson, Linda Hansen, Karin Nesse, Andrea Mauer, Theresa Troutman, James Neumayer, and Gail Hammer, **EXHIBIT 6.**

Janet Cahill, Montana Coalition Against Domestic Violence, announced their support of SB 278. In 1994 programs in Montana provided more than 20,000 days of emergency shelter to women and children. More than 6,000 women sought services from programs and more than 3,000 children came with them for those services.

Sharon Hoff, Executive Director Montana Catholic Conference, stated that domestic violence counselors teach that violence is a learned behavior and in many cases men who become abusive and the women who are abused grew up in homes where violence occurred. In such a situation a child can grow up believing that violence is acceptable behavior. Boys learn this is a way to be powerful. Abuse counselors say that a child raised in a home with physical abuse is a thousand times more likely to use violence in his own family. At the same item, 25% of men who grew up in abusive homes chose not to use violence. In the United States there is an estimated 3 to 4 million women who are battered each year by their husbands or partners. In 37% of obstetric patients of every race, class, educational background, report being physically abused while being pregnant. More than 50% of the women murdered in the United States are killed by their partner or their ex-partner. Men abuse women to convince themselves that they have a right to do so. One of the reasons women stay in violent situations is that they are at the most dangerous point when they attempt to leave their abusers. Research indicates that women who leave offenders have a 75% greater risk of being killed by the offender than those who stay.

Mark Muir, Police Officer for the City of Missoula, announced their support of SB 278. Family violence is something he frequently encounters. It is reported as the major cause of injury to women. Many communities are crying out for tougher enforcement and sentencing with the purpose to reduce injury and death. Arrests alone are not the answer to this crime. He presented his written testimony, **EXHIBIT 7.**

Kate Cholewa, Montana Women's Lobby, presented her written testimony in support of SB 278, **EXHIBIT 8.**

Gene Keiser, Director of Montana Board of Crime Control, announced their support of SB 278.

Jim Oberhofer, Montana Chiefs of Police Association, stated he has had 25 years in law enforcement witnessing domestic abuse and he, as well as all the other chiefs around the state of Montana, urged support of SB 278.

Martha A. Bethel, City Judge for the City of Hamilton, presented

her written testimony in support of SB 278, **EXHIBIT 9.**

Mary Grady stated she is a survivor. A few years ago she did not know how to protect herself or her children. She asked the committee to think of responsibility and accountably as they read through the bill as well as what motivation is there for a change in behavior of offenders. Abusers often create financial, medical and emotional crises in the lives of their victims.

John Connor, Montana County Attorneys Association, stated the Association generally supports concepts to strengthen laws involving domestic violence. It is universally agreed that we do need to strengthen the laws with respect to domestic violence. He has learned that prosecutors need to respond more swiftly and with more sensitivity to issues involving domestic violence. Immediate, sensitive, and informed response is the best way to deal with these problems.

Beth Baker, Department of Justice, announced their support of SB 278. In 1993 the rate for domestic violence offenses has risen steadily since the offense was first classified. There were nearly 2300 reported cases of domestic abuse in this state. Many of them go unreported. SB 278 represents a significant effort to heighten public awareness that domestic abuse is not at all domestic. It is a crime of violence and it must be treated seriously. The bill strengthens the options available to victims. One of its most important features is the separation of the Orders of Protection from marital dissolution statutes. This bill will keep the restraining order provisions in the family law code for appropriate cases, but it will now give independent protection to victims regardless of their marital relationship. Many violent behaviors are learned at home.

Kelly Slattery-Robinson, YWCA Domestic Violence Assistance Center in Missoula, stated their support of SB 278. She particularly likes the strengthening of the TRO violations and the additional of probation for offenders.

Klaus Sitte, Missoula Family Violence Council, stated he has represented victims and survivors of abuse for more than 21 years. Family violence is cross cultural, cross-economic, cross-racial, and affects many families. The revision of Montana's present TRO and the laws related to it are needed. SB 278 makes it clear that neither marriage or relationship provide haven for the abuse. Peace officers should have every available option they can to protect themselves, the victims, and the innocent bystanders.

Patrina Sims presented her written testimony, **EXHIBIT 10.**

Jan Healy presented her written testimony, **EXHIBIT 11.** Every 34 seconds in the United States a person dies of a heart attack. Millions of dollars and man hours are spent combating that disease. Every 15 seconds in the United States, a woman is

beaten and there is not enough space available in the shelters nor money available to help them escape their battering relationships. The National Crime Survey states there are 21,000 hospitalizations a year related to domestic abuse -- 99,000 bed days, 28,700 emergency department visits, 39,000 physician office visits, 175,000 days of disability, $44 million in direct medical costs. SB 278 will help by having health care workers provide the Notice of Rights to each victim of abuse.

Amy Pfeifer, Women's Law Section of the State Bar of Montana, stated they have been involved in drafting and supporting family violence and stalking legislation for ten years. The protections in the code have outgrown their placement in the marriage and divorce code. They urge support of SB 278.

Anita Coryell, YMCA Domestic Violence Assistance Center, stated she has worked with child victims of domestic violence for three years. Seventy-five percent of all reported injuries to women and children as a result of domestic violence occur after the woman has left the relationship. They support SB 278 as amended because it has provision which will keep children safer.

Judy Williams presented her written testimony, **EXHIBIT 12.**

Diane Tripp, Vice Chairman Missoula Family Violence Council and also a Victim's Advocate for the YWCA Battered Women's Shelter urged the committee's support of SB 278. She submitted additional handouts, **EXHIBITS 13, 14, 15, & 16.**
Opponents' Testimony: None.

Informational Testimony: None

Questions From Committee Members and Responses:

SENATOR LORENTS GROSFIELD asked **Ms. Wang** which health care workers the bill referenced. **Ms. Wang** stated the term health care workers was defined as previously defined in the code. It was cited in the statute. The Missoula Family Violence Council will draft a form which would be available for any health care worker to make copies.

SENATOR MIKE HALLIGAN questioned the availability of forms for TROs. **Ms. Wang** stated that most local governments go through forms quickly and with this lead time notice they could start ordering less of the old forms. **SENATOR HALLIGAN** stated this was a mandate to local governments. **Ms. Wang** stated that this statute requires that the attorney general's office develop sample forms and she is sure it will be developed in time for the legislation to go into effect.

Closing by Sponsor:

SENATOR BROOKE commented that they have worked on amendments relating to firearms and the seizure of firearms. She asks the

legislature to do their part. We need a lot more training, education, and awareness of the problem in our society. SB 278 will provide a big step in that direction.

EXECUTIVE ACTION ON HB 26

Motion/Vote: **SENATOR LINDA NELSON MOVED HB 26 BE CONCURRED IN.** The motion **CARRIED UNANIMOUSLY** on oral vote. **SENATOR REINY JABS** will carry the bill on the Senate floor.

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 2/3/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
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SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 2/3/95
BILL NO. 278

To: Chairman Crippen and Members of the Senate Judiciary Committee
From: Judy Wang Assistant City Attorney, Chair Missoula Family Violence Council
Re: Senate Bill 278
Dated: February 3, 1995

Introduction to Senate Bill 278

Senate Bill 278 proposes changes to two areas of Montana law that deal with violence and victims of violence. The first change removes TROs (Temporary Restraining Orders) from a subsection in the marriage and divorce statutes and places them in their own code section. The proposal renames TROs Orders of Protection. The new section revises Montana law to allow victims some protections that are currently not available. As an example, the proposal allows rape victims to get an Order of Protection.

The second change revises the criminal code concerning assaults within the family and between partners. We propose changes that cause these assaults to be taken more seriously, so that they are treated like similar crimes. The proposal calls for suggested minimum sentences for a first and second offense partner or family member assault that are similar to DUI sentences. We ask that local governments be allowed, but are not required, to establish probation offices to monitor offenders after conviction, to increase sentence compliance and reduce the rate of reoffending.

This bill was drafted by a committee of people including a prosecutor, a legislator, victim advocates, family law attorneys and children's advocates. A number of people who had input into the bill attended a National Conference on Family Violence Legislation and some of the proposals in the bill began as ideas from that Model Code. The proposal was reviewed and suggestions were implemented from a District Court Judge, County Attorneys, a Justice of the Peace, Health care workers, Victims of Family Violence, Victim Advocates and the Attorney Generals office.

Senate Bill 278 looks longer and more complicated than it really is. The proposal renames the crime currently called Domestic Abuse Partner or Family Member Assault and the renaming process called up many statutes that aren't otherwise impacted by the proposal. The real essence of the bill starts on page 10.

The easiest way to explain why the changes are needed in Montana now is to give examples of problems that have occurred under current Montana law. I will then explain how the proposal would prevent the problem from happening under the law as it will read if Senate Bill 278 is enacted.

Name Changes (Sections 10, 45-5-206 and Sections 21-29)

The current criminal statute that prohibits violence within the family is called "Domestic Abuse". Using everyday definitions for those terms the crime sounds like "Tame" (domestic) "misuse" (abuse). It hardly sounds like a crime at all!

The proposal renames that crime "Partner Assault" or "Family Member Assault". That makes the offense "sound like" a crime. As it is renamed the title refers to the criminal act (Assault) and the victim in the crime (Partner or Family Member). This is similar to other Montana Statutes (Assault, Mistreating Prisoners, Endangering the welfare of children).

Orders issued by a judge to protect a victim from further violence are currently called Temporary Restraining Orders (TROs). Sometimes other terms are used like Preliminary Injunction or Injunction or Restraining Order. The different titles we currently use have created confusion and don't make it clear what the real purpose of the statute is-to protect victims of crime. The proposal renames TROS Orders of Protection and Temporary Orders of Protection. This makes the purpose of these orders clear, to protect victims of crime from further violence.

Suggested Minimum Penalties (Section 10 45-5-206(3)(a) and Section 12)

Missoula County District Court Judge Douglas Harkin is a member of Missoula's Family Violence Council. He sees third offense felony Domestic Abusers (to be renamed Partner or Family Member Assaults). Many of the offenders that he sees for felony offenses have not spent any time in jail other than when they were arrested. Basically many of the offenders are charged with a felony before they even "get it" that what they have done is an crime.

The proposal calls for minimum sentences that are similar to first and second offense DUIs. The minimum sentences are proposed in strong language "an offender convicted of partner or family member assault shall be fined... and shall be imprisoned in the county jail not to exceed 1 year or not less than 24 hours...". The committee's intention was that those sentences are strongly suggested, but not necessarily absolute. We did not add language that stated that those sentences cannot be suspended. The intent is that the minimums could be suspended given appropriate circumstances. For example, an indigent defendant who could not pay the fine or an offender so ill that incarceration could endanger his or her health could have the minimums imposed, but suspended. The purpose of the minimums is to make it clear that, like DUIs, this is a crime and there are penalties that follow when you commit a crime.

TROs (to be renamed Orders of Protection) frequently are not taken seriously under Montana's current laws. In Missoula Municipal Court we frequently see offenders who have committed two, three, four sometimes even five TRO Violation offenses. Each and every one is a misdemeanor offense and often times offenders are only penalized with a small fine. Some times traffic offenses are taken more seriously than TRO Violations.

The proposal calls for a third offense Violation of an Order of Protection to be a felony. It also suggests a minimum sentence for a second offense TRO Violation (to be called a Violation of an Order of Protection).

Victims Who Still Need Protection (Section 10, 45-5-206 (2)(a) and Section 22)

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There are still victims of crimes who need protection but are not eligible for a TRO under current Montana law. The proposal makes Victims of Rape, Incest and Sexual Assault eligible for an Order of Protection, regardless of their relationship to the offender. Inlaws who commit one of the listed crimes against a family member could be served with an Order of Protection. Senate Bill 278 includes people who have had a child with their abuser in the definition of "Partner" so that they are eligible for an Order of Protection, if they have been the victim of one of the listed crimes committed by their partner.

Counseling (Section 10, 45-5-206 (4)(a) and (b))

Montana law mandates 25 hours of counseling upon conviction for the offense of domestic abuse (to be renamed Partner or Family Member Assault). There is no assessment prior to counseling.

A few years back a Missoula offender in counseling disclosed in group that he had been a "Hit Man" for the Mafia prior to moving to Montana. He was in the same group with offenders who had been cited for their first offense. It doesn't make sense that we could or should put an experienced killer in with first time offenders. That is exactly what we did. We undoubtably do mix inappropriate people in the same counseling group when we do not assess offenders before we send them to counseling.

The proposal calls for an assessment of violence, dangerousness and chemical dependency prior to counseling. It only makes sense that we want to figure out what the offenders problems are before we try to fix them with counseling.

Notice of Rights to Victims (Section 15, 45-6-602 and Section 20)

Currently Victims are given some information about their rights and the services that are available at the time of an arrest. Some of the information that is given, under our current statutes, is misleading. No one other than peace officers is required to give a notice of rights to victims.

The proposal calls for a corrected notice of rights, both to reflect current law and the other proposed amendments. Health care workers, when they suspect that a partner or family member assault has occurred, under Senate Bill 278, also give a similar notice of rights. The reason for including health care workers is that there are many many victims of family violence who seek health care for their injuries but who do not connect with anyone else in the system. We propose that health care workers also give a notice of rights so that we get the message out to victims about their rights and services that are available.

Organization of Montana Laws relating to Victims of Family Violence
(Sections 5, and Sections 21 through 29)

Currently TROs are located as a subsection of a Marriage and Divorce statute. That doesn't make sense when stalking victims and victims of sexual assaults also need Orders of Protection. Most people who get a divorce do not need an Order of Protection. Many of the

people who, get an Order of Protection do not need a divorce and many are not married to the offender.

Our proposal moves Orders of Protection (formerly TROs) to a victims rights section. It simply makes sense that an Order of Protection is very different than a divorce.

Sentence Monitoring (Section 18)

We really don't have a way to make sure that offenders follow the sentences that are required of them under current law. We tell them to quit drinking, get counseling or stay away from the victim but we don't have a method of making sure that they do what we tell them to do.

The proposal gives local governments the authority to create misdemeanor probation officers who can monitor offenders. The probation officers can monitor DUI offenders and other misdemeanants as well. Senate Bill 278 allows local governments to set up these offices but did not make it mandatory that they do so.

Protections Available (Section 23)

There are a number of kinds of protections for victims available under current law. We continued the protections currently available and added some other protections.

The proposal gives judges the discretionary authority to order that an offender shall stay a certain number of feet away from a victim. That is important because some offenders, if ordered to just stay away without being told a foot restriction, will go where ever and when ever the victims is on public property and terrorize her or him. Having a foot restriction gives the victim a comfort zone and makes it clear to the victim or the offender where the boundaries are. The proposal gives a judge the option to order that an offender stay away from other named family members and order some additional property protections where and when it is appropriate.

Practical Problems (Sections 24 and 27)

Currently there is some question about whether TROs are enforceable throughout the state. There are still a number of courts that will order that a victim of a crime, who requests that he or she be protected by an TRO (to be renamed an Order of Protection) be restricted in her contact with the offender. An additional question is whether and when a TRO is moved to district court.

Senate Bill 278 resolves all of those questions. It states clearly that an Order of Protection is enforceable throughout the state. It states that the process to get an Order of Protection is the same for all persons. To get an order of Protection you must swear out a Petition that you are a victim of a crime. No one can get an Order of Protection by simply showing up at a hearing and asking that it goes both ways. We clarified when and if a

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Petitioner should file an Order of Protection in District Court or a court of limited jurisdiction.

Brief Summary of Written testimony

District Court Judge Douglas Harkin
Dawson Deputy County Attorney Charles Unmack
Pam Anderson with Turning Point the DUI school in Missoula
Sam Lemaich Regional Supervisor Probation and Parole
Anonymous Victim a Survivor
Prevention Education Specialist Linda Hanson
Andrea Mauer a Survivor
Karin Nesse a Survivor
Thresa Troutman a Survivor
Jim Neumayer Sergeant City of Missoula Police Department
Gail Hammer an Attorney who has worked with battered women

On behalf of the Missoula Family Violence Council, the Missoula City Attorneys Office and personally as a Prosecutor with 8 years experience prosecuting Partner/Family Violence cases,I request you to vote for Senate Bill 278 as it is amended.

– DAWSON COUNTY ATTORNEY –
215 SO. KENDRICK • P.O. BOX 1307
GLENDIVE, MONTANA 59330
(406) 365-2532

February 1, 1995

Senate Judiciary Committee
Bruce Crippen, Chair
Capitol Station
Helena, MT 59620

Re: Domestic Violence Legislation

Dear Senators:

I hoped I could be present for your hearing on the Domestic Violence legislation on Friday, February 3, 1995, but my schedule does not permit me to make the trip. I hope you will accept my written comments for your discussion of the bill.

I am a Deputy Dawson County Attorney and I am frequently required to apply the domestic abuse laws. Domestic abuse is a serious problem in our community. It devastates our families. It humiliates the victim and overwhelms the children. Domestic violence often places the abused spouse into our welfare system. The children often become involved in the youth judicial system, either as youths in need of care or as juvenile delinquents. The social cost of domestic violence is enormous.

From my experience, many instances of domestic violence occur in families with a history of violence. It is natural for people to act in the manner in which they observed their parents act. I have also witnessed women get away from an abusive man only to fall

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in with another abusive man. I do not know why. But I do know that intervention and education are keys to the problem.

I am asking your support for this legislation for the following reasons:

1. The bill refines the process of obtaining a restraining order. Currently, restraining orders may be obtained in the statutory section dealing with divorce. But the crime of domestic violence occurs in many more situations than just divorce. This bill creates a new section for orders of protection. That section should be more readily understood by distraught, abused spouses.

2. The bill increases the minimum penalties for committing the crimes of Domestic Abuse and Violation of a Protection Order. Presently, a violation of a Protective Order is a misdemeanor for any number of offenses. The bill will make a third offense a felony. I strongly support increased penalties for repeat offenders.

3. The bill provides a more detailed educational course for an offender and gives prosecutors more latitude in requiring additional hours of counseling for offenders. If we are to break the cycle, we must do it through education.

4. The bill expands the categories of persons eligible for an order of protection. Presently, the protection of victims falls on county attorney offices. Sadly, we often do not accomplish enough on behalf of victims. This bill will allow victims to be more active on their own behalf.

I hope you will give your support and your vote to this legislation. It represents a strong and informed step toward crime.

Sincerely,

Charles Frederick Unmack

Charles Frederick Unmack

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DATE 2-3-95
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WESTERN MONTANA
MENTAL HEALTH CENTER
TURNING POINT

500 North Higgins, Suite 101
Missoula, MT 59802 (406) 543-8623

February 2, 1995

TO: Senator Bruce Crippen, Chair
Senate Judiciary Committee

FROM: Pamela B. Anderson, Supervisor, Montana ACT Program

This is being submitted in support of SB 278, An Act Revising The Domestic Violence Laws, particularly as it relates to allowing local governments to establish a misdemeanor probation office.

Over the last fifteen years, I have been involved with the Montana ACT Program the assessment and education program mandated for DUI offenders. As a consequence, I have worked closely with the lower court systems and have a great deal of respect for their power and effectiveness in terms of intervention and deterrence. The lower courts tend to be more of a "people's court" where defendants often represent themselves and disclose information to the judges that they might not do in a more formal setting, or in the presence of an attorney. This then allows a judge to fashion sentencing conditions that deliver the necessary punishment, and offer rehabilitation. It is not uncommon in Missoula for a judge to sentence a DUI offender to the maximum jail term then suspend part of the sentence provided that certain conditions are met. These conditions are typically designed to intervene in a pattern of substance abuse and they are often applied in domestic violence convictions as well given the high incidence of alcohol or other drug involvement in those cases. If conditions are violated, the Court may then revoke the suspended sentence and the defendant may serve the maximum jail term. For many, the fear of further jail time is an essential motivating factor in bringing about the necessary change and in deterring them from engaging in behavior that could lead to further illegal activities.

Unfortunately, the diligence of the court systems in applying these strategies is hampered by there being no mechanism in place to monitor compliance with the sentencing order. SB 278 specifically addresses that deficiency. Given the high correlation between substance abuse and domestic violence, a program to monitor compliance with sentencing conditions for family violence offenders would target both populations. We, in the chemical dependency treatment field believe that change will occur when the cost of use outweighs the perceived benefit. Adverse consequences consistently applied by the legal system often tip the scales in favor of providing the motivation to engage a recovery process.

Finally, I suspect it would be the rare felon who did not leave behind a trail of misdemeanors. Swift and certain punishment at the misdemeanor level, combined with stringent sentencing conditions and close monitoring could serve to intervene in that progression. In terms of the financial cost to society and the human cost to victims, early intervention efforts would seem to be worthy of serious consideration.

Thank you.

MISSOULA INDIAN CENTER

01/30/95 11:20

MISSOULA INDIAN CENTER

2300 Regent St., Suite A • Missoula, MT 59801-7939
Telephone (406) 329-3373 • Fax (406) 329-3398

January 30,1995

To whom it may concern,

This letter is in support of The Proposal, L. C. 265. I feel this proposal addresses many of the issues we are facing today, concerning domestic violence, in a more timely and appropriate manner than current laws in existence. Required counseling assessments prior to counseling can only help to insure more effective counseling . Expanding the definition of relationship to include in-laws and people who have parented children will help to reduce the barriers that prevent many people from accessing help through legal means.It will also help to reduce the overwhelming numbers of child abuse in this state through mandating better ways to deal with violent behavior. A lot of the violence among our youth today is because this behavior has been role-modeled in their home environment.
It is time for our state laws to take a more workable stand against violent acts perpetrated on one human being by another and see to it that people who are convicted of domestic violence receive the education they need to better communicate their feelings of frustration and anger. If a person is continuing to appear in court on domestic violence charges then apparently that person is not benefitting from the counseling and the criminal charges should be raised to a felony status. I feel the same way about TRO violations remaining misdemeanors after multiple violations. Most people have learned to be accountable for their behavior by the time they reach adulthood. Allowing continuing TRO violations to remain misdemeanors is allowing these people to thumb their noses at the entire legal system and endangering the lives of their victims. A third offense TRO violation should be raised to a felony status.

Sincerely,

Linda Hansen

Linda Hansen
Prevention Education Specialist

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In August of 1993, my ex-husband was returning my four children after a week-end visitation. I am the sole custodial parent. He has the first and third week-ends with the children. He entered my house against my request that he remain outside, he pushed me up against the wall, knocked me down....He hurt me badly so I called 911 for help. I was hurting, both physically and emtionally, and it came through clearly in the phone call. I ended up in emergency care. X-rays showed injury to my neck, arms, and back. On Monday morning, the next day, I went from the medical clinic to the police and requested a temporary restraining order. The judge granted the TRO. A date was set for hearing in September. At that hearing, my ex-husband showed up with his attorney. Unfortunately, no evidence was presented. I had my medical records with me, etc. The opposing attorney simply stood up and told the court that I might, sometime in the future, come to my ex's home or place of business and assault him, so a mutual restraining order was necessary. I had not been to his home or store in any of the years (1987 on) since the children and I had left him and did not intend to ever be near him at any time. Yet, I was not allowed to even protest --- a mutual restraining order was issued to my utter shock and amazement!

Looking at the preceeding, one could obviously assume a case of "sour grapes." Not so! I was married to this man from 1972 until 1991. We had five children. Some times were good, some times were horrible. He hit me, he broke bones, he threw me down stairs, ad nauseum. I loved him and I stayed with him. I dragged us from counselor to psychologist to psychiatrists, to marriage seminars, to family seminars.... to no avail. He would be kind for a period of time and then all hell would break loose again. I left him when he began hitting the children. The pattern of violence and pain had to stop!

I got my first restraining order in 1976. I fled with my infant daughter from Lewistown, Montana, to California to escape the pain. My ex followed me to California, convinced me that change was possible, and thus began the ride of counselors. I was forced to obtain multiple restraining orders over the following years, just to keep him away from me. He usually obeyed these orders. But once an order expired, I was facing violence again. We left him for good in the fall of 1987. In October of 1988, he attacked me in my home, severely injured me in front of all the children, and the summer of that year, he was found guilty of Domestic Abuse. He appealed to District Court and plead guilty there. He got a suspended sentence and a round of mandatory counseling. He'd seen enough therapists in the past so, of course, there was no significant changes.

With this brief history, it should be apparent that I needed and once again, applied for, a restraining order. I

had not gone to this man's home or office, entered it, and assulted him. He was at my home, hurting me, while the children cried. So, why the mutual restraining order in September of 1993? He had not requested this TRO. I had done so. Yes, there was a history of pain and anger and abuse. Yet, on the assumption that I "might" assault him at some time in the future, I was made equally guilty as he when the mutual restraining order was issued. Is this fair? Or is something wrong here?

In the year that followed the issuance of this order, I would receive numerous phone calls at odd times of the day or night. I would pick up the phone and my ex would tell me that we were not allowed verbal contact with each other as a result of the mutual restraining order. He would tell me that because I spoke to him (i.e. saying, "Hello!" when I picked up the phone) that he was going to "put me away for good this time" and that I was violating the court's order. He was allowed, by terms of the order, to call the children. However, most of the calls were placed when the children were either in school or in bed because it was so late at night. The harassment continued, I spoke to the police, and they recommended an answering machine to screen my calls. In the spring of 1994, I bought a machine. My ex was furious and accused me of trying to avoid him and keep the children from him, etc. etc. I was forced to change my life in other ways as a result of the mutual order. I changed my driving patterns so that I was never near his home or store, I hid in the house when he arrived to pick up our children for visitation, etc. ---- all because of his threats to get me in some violation of the order. It was a very paranoid way to live. He did, in fact, try to file some restraining order violations against me. My children and I were all forced to go to the police and each of us answer his so-called allegations. They did not hold up as a matter of fact. It was a bad year! Gary did violate the order and was charged with the violation.

Mine is not an isolated case. I was presumed to be as guilty as my ex because of the mutual restraining order. I was never given a chance to prove otherwise. I have heard many other cases (I volunteer at the Domestic Violence Assistance Center here in Missoula) where exactly the same thing occurred. It makes a person not want to ask for help because just the fact of asking for protection puts them in the position of having the tables turned on them. They end up as guilty as their abuser. This is very, very wrong and should <u>not</u> be allowed!!!

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I am writing this as a means of protesting the court's handing down mutual restraining orders. It seems to have become almost routine practice for the courts to issue these orders in domestic violence and/or stalking cases. Such a ruling presumes that both parties at the restraining order hearings are equally guilty when, in fact, it is almost overwhelmingly one party, the injured party, who has applied for the relief afforded by these orders. Why should the innocent party be deemed as guilty as the offending party? It is my belief that only in very, very rare cases should a mutual restraining order be utilized by the courts. It appears that it is easier and less time-comsuming for the courts to simply issue these mutual orders rather than taking the time for a brief hearing where the parties could present their cases, where the injured party could present his/her evidence as to why they asked for a temporary restraining order in the first place and why they need to have this order continued, either permanently or for a year. By issuing mutual restraining orders, the courts are failing to protect those individuals who have come asking for their help.

Karin Diane Sellman-Nesse
1-1-95

Chairman Crippen and Members of Senate Judiciary Committee:

I was married for a period of five years, during which time I went from a relatively normal existence, to living in fear both for my own life and the life of my young son.

In the beginning of the marriage, my husband's behavior was somewhat distant and would occasionally erupt into fits of anger. Over the next several months, he became increasingly argumentative, his mood swings more frequent, and his anger more explosive. He would have violent rages resulting in breaking any object he could find. Some of his greater challenges included throwing objects directly at me; like the butcher knives he would try to "stick" in the walls and counters around me. For a short time, he seemed satisfied that these rages were having the desired effect upon me.

I slowly became isolated from friends and family, I kept my fear to myself, and I worked very hard at trying to keep my husband happy to avoid his wrath. His bizarre behavior soon became a way of life, but I tried to create a sense of normality and security, especially after the birth of my son. My days were consumed by either bracing for, or recovering from, yet another violent rage. As I live within this realm of escalating violence, I became immune to my husband's outbursts and when I ceased to react to his tantrums, he became even more infuriated. He then went to even greater lengths to maintain the previous level of fear and thus, his control.

After a few years, my husband became more abusive and began to threaten my life more directly by using guns during his rages. Initially, he would only wave the gun around or shoot off a round outside. In later months, he would wake me during the night, stand over me, point a loaded gun at my head, and pull back the hammer. This too became some what routine.

I did not believe that I could get out of the marriage. I truly believed that my husband would kill me if I tried to leave him or if I notified authorities. My only concern then became protecting my son at all costs. For this reason, I sought out legal advise from an attorney. I

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intended to have a will drawn up in the hopes of removing my son from my husband after my death. Sometime after a will was in place, I decided to go through the divorce process, even though I firmly believed that I would not see it finished.

During the months that followed, I had a "TRO" in place; this deterred my husband, but did not stop him. He would follow me, disable my car, call me and otherwise harass me. He also continued to threaten me. I knew that he had guns in his possession and I didn't feel very certain that a piece of paper would stop a bullet. I live in fear as I awaited my certain fate. I only hoped that I might have enough time to react when my husband would break the TRO for the last time with the intent to kill me.

I believe that in my case at least, if a law had been in place to make multiple TRO violations a serious offense, I would have been safer and my husband's ability to harm others greatly reduced. He was basically a coward, but he felt no intimidation or threat from laws which restricted his contact with me.

I have been lucky, I am still alive and enjoying life with my son. My ex-husband is now serving time in Deerlodge for assault, among other crimes. I feel safer now than I have in many years, but the fear never really goes away. I am unsure of the best way to prevent the problems of an abusive society. I do believe however, that the time to place restrictions and penalties on abusers is before they become murderers.

Please take the time to consider Senate Bill 278.

Andrea Mauer

Andrea Mauer

February 1, 1995

To Members of the Montana State Senate:

I am writing in support of SB-278. I am presenting my testimony anonymously, and in writing, to prevent reprisals from my former husband. My former husband is a well-known business and political figure in our community. He is also well-known to the members of the legislature as a lobbyist.

I believe there is a perception among many that domestic violence only occurs in households at the lower end of the socio-economic scale. My husband always wore a suit and tie. He was pleasant and well-spoken. He appeared to be very attentive and concerned while we were in the presence of the medical care providers. In actuality, his concern was based on a need to be sure that I would not disclose the real cause of my injuries.

My marriage to this man was marred by domestic violence. I suffered injuries which ranged from bruises to sprains to cracked ribs. To conceal the cause of my injuries, my husband did not take me to the same medical provider twice in succession. Although I received medical treatment numerous times, no medical provider ever discovered the true cause of my injuries. This was due, in part, to the fact that my husband never left my side at any time during the medical examinations. In each emergency room, at each doctor's office, my husband gave a detailed account of how my injury occurred. Of course, the explanation was always untrue but, because I was never left alone with the medical staff, I never had the opportunity to give an accurate account of the cause of my injuries. On at least two occasions, when the medical care providers suspected I might have broken bones, my husband insisted on accompanying me while x-rays were taken. I never had the opportunity to describe what had actually happened to me. If the medical care providers ever suspected that my injuries were not consistent with the explanations given by my husband, they never had the opportunity to question me outside the presence of my husband.

At the time, I was unaware of any options available to me to remove myself from this situation. I had a small child and no independent income. I had no family in town nor in this state. My circle of friends were primarily persons who were associated with my husband and his business. My husband repeatedly warned me not to disclose what had occurred, convincing me that no one would believe me. I was convinced that I had no options.

I believe that the provisions of this Bill, which would require medical care providers to speak to a person suspected to be a victim of family violence outside the presence of the suspected perpetrator, might have given me the information I needed to extricate myself from this relationship. I believe that many times the explanation of my injuries were not consistent with the

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injuries themselves. However, no one had the opportunity to question me about my injuries nor did any one have the opportunity to inform me of my rights as a victim of family violence. My ordeal might have ended months, maybe even years, earlier if this Bill had been in effect.

Since my divorce I have worked with other victims of family violence. In my experience with other victims, many feel as I did. They don't know where they will go or what they will do. They are unaware of any options that may be available to them and they are unaware of any rights they, as victims, might have. The provisions of SB-278 would give vital information to victims, through law enforcement and through medical providers. I strongly urge you to pass this bill.

Theresa H. Troutman
303 Bannack Ct.
Missoula, MT 59801
Feb. 1, 1995

Dear Mr. Chairman,

I am writng this letter to you concerning Senate Bill 278. I strongly believe a third restraining order violation ought to constitute as a felony. I also believe making a restraining order mutual without having any basis of violence or intimidation to be unjust and unfair, if not ridiculous.

In September of 1993 I separated from my husband John. We had been married for 6 years. During our entire relationship of 8 years he had become violent with me on many occasions. 2 days before I left him he was particularily violent with me and was consequently arrested and convicted of domestic violence. To this day John thinks he was justified in his treatment towards myself.

For 2 months after our separation John threatened my welfare and my life. He followed me everywhere and called me on some days over 20 times. To say the least I was terrified and found it very difficult to go about my regular daily schedule of attending the University of Montana and taking care of our 2 children. I was increasingly worried about [redacted] our survival. I decided to get a restraining order. From day 1 John never took it seriously. I would see him outside my classes and he would follow me where ever I went. He was cited 4 times for violating the restraining order. Each time he was cited he would become more furious and become even more insistant and sneaky about how to come in contact with me. By March of 1994 I was a nervous wreck and I was increasinly frightened to stay at my home. On many occasions I took the children and went to stay where I knew John could not get to me. His threats and strange behavior and his past violence made me very aware of what he is capable of doing to me and my children. In June of 1994 he was convicted of violating the restaining order and because it was only a misdemeanor he was again warned to stay away from me and given a fine.

John's blatant disregard for the restraining order needs to be used as an example. Obviously to violate the restraining order brought on no dire consequences. None at all. I am fortunate in the fact that I was able to get away from John and keep myself and my family safe, but if John had been arrested and been tried for a felony instead of a misdemeanor then I would have been protected according to the law.

[illegible] of the restraining order made mutual without any [illegible] complaint [illegible]. There was no justification or reason to

Respectfully,
Theresa H. Troutman

Theresa H. Troutman

CITY OF MISSOULA
POLICE DEPARTMENT

"Professionalism With Pride"

PETE LAWRENSON, Chief of Police

BOB WEAVER, Assistant Chief

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Senate Bill 278

February 1, 1995

Chairman Crippen
Members of the Committee

My name is Jim Neumayer and I am a sergeant with the Missoula Police Department. I am an active member of the Missoula Family Violence Council and I direct four other police officers that are also involved with the Family Violence Council. I regret that I am unable to attend the hearing in person, however, I would like to express my thoughts on Senate Bill 278.

I have been employed as a police officer with the Missoula Police Department since November of 1976. My background in law enforcement has imparted me with a unique insight into family violence and the impact on family members. This knowledge has strengthened my belief, the home environment is the safest place any person should know.

Montana's current domestic violence laws are critical tools in dealing with the nationwide epidemic of violence. One simply needs to pick up a newspaper or turn on the television to see the consequences of family violence on our society.

Stringent and enforceable laws in dealing with the abuser is vital. However, this cannot be at the expense of the victim. Refining Temporary Restraining Orders and ensuring that all victims have accurate information regarding assistance will help them break the cycle of violence.

Family violence and the ensuing circle of violence is a **learned behavior**. Early intervention, whether through strong and clear legislative measures or support organizations, is crucial in sending the message throughout the family, to include the children who witness the abuse, that violence is not the answer.

Montana has a unique opportunity and **obligation**, to confront the issue of family violence in a pro-active manner with the approval and passage of Senate Bill 278.

I am in favor of the proposed changes in the statutes and I thank you for your time and consideration in this matter.

Respectfully submitted,

James Neumayer

James Neumayer

435 RYMAN
PHONE (406) 523-4777

MISSOULA, MT 59802-4297
FAX (406)728-6690

February 2, 1995

Dear Chairman Crippen and Members of the Senate Judiciary Committee:

I am a native Montanan who has worked for the past nine years as a volunteer crisis counselor for several organizations opposed to domestic violence. I am also an attorney with eight years' experience representing protective parents of children at risk of abuse or neglect in custody cases. My experiences prompted me to write this testimony, to urge you to adopt Senate Bill 278.

Domestic violence is a serious health and social problem in the United States and in Montana. The only significant reduction in domestic violence seems to come from a consistent and firm message from the community that it is unacceptable behavior and will not be tolerated in a civilized society. Meaningful protective orders consistently enforced play an important role in carrying this message.

Mutual protective orders carry a different message, one that diffuses accountability and furthers the myth that both parties are in equal positions, so both are equally able to stop or prevent the violence. Such a message ensures that the violence will continue.

According to the AMA, domestic violence is the single largest cause of injury to women in the United States, exceeding car accidents, rapes, and muggings **combined**. Nearly four million women are injured by domestic violence each year. One in six pregnant women are physically assaulted by their partners during pregnancy. Domestic abuse during pregnancy is the leading cause of birth defects.

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The Montana legislature created restraining orders to protect battered citizens from domestic partners, family members and former spouses. Mont. Code Ann. 40-4-121(3)(a). Some courts routinely issue mutual protective orders. This practice appeals to judges and lawyers because it saves time by avoiding show-cause hearings. But saving time at the expense of safety and lives of Montana citizens is misguided.

Often people who have been battered do not oppose mutual orders because they want to expedite the proceedings and avoid any further violent reactions from their abusers. Since they do not intend to commit acts of violence, they have no objection to a mutual restraining order.

MUTUAL PROTECTIVE ORDERS DO NOT PROTECT

Mutual restraining orders have harsh, unanticipated results. When police officers respond to a domestic violence call and discover a mutual restraining order, they may not know who has the actual history of battering. It may be unclear who the real victim is. They can only assume both parties have been violent. They may arrest both parties, even with no evidence of mutual abuse. This possibility will prevent many battered people from seeking much needed assistance from public safety officials. Or police may decline to arrest either party, leaving the victim to face the batterer's retaliation alone.

Mutual orders and mutual arrest give the wrong message to both batterer and battered. They say the person who was battered is equally responsible for the violence. They absolve the batterer from responsibility and give permission for further battering.

MUTUAL PROTECTIVE ORDERS PERPETUATE DOMESTIC VIOLENCE

Mutual protective orders give the wrong message to victim and batterer alike. They create the impression that the battered person is equally responsible for the batterer's violent behavior, thereby reinforcing a basic misconception held by many victims that they have either instigated or somehow deserve the abuse.

The abuser will interpret a mutual order as a message from the court that the batterer is not accountable and the battered person is as much to blame for the violence. Rather than helping to break the cycle of domestic abuse, mutual orders enhance the probability of future violence. The batterer must be held accountable and both parties must understand that violence is unacceptable.

Although many battered people do fight back against batterers, their actions are largely defensive and the effect is less severe than the batterer's violence. The critical question is which party truly needs protection.

The self-defense must not be equated in severity or purpose with the violence initiated by the batterer. Equating self-defense and battering helps the batterer rationalize the defensive behavior of the battered person as justification for further battering.

Mutual orders can put the victim in a worse position than if there were no protective order at all. REPORT OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURTS, 15 FORDHAM URB. L.J. 11 (1986-87). Mutual protective orders can make the battered person look equally violent in the eyes of the courts, and may make it harder to get a more restrictive order if the violence recurs.

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We can draw an analogy between the approach we should take to domestic violence and the successful approach used to combat drunk driving. The combination of saturation education of people of all ages, innovative prevention, strict enforcement, and stringent punishment have had a dramatic impact on highway fatalities associated with drunk driving. *Developments in the Law: Legal Responses to Domestic Violence*. 106 Harvard Law Review 1505 (1993). The same approach can work with domestic violence.

People who have been battered must receive meaningful protection. Batterers must receive the clear, unequivocal message that their violence is unacceptable and will not be tolerated. Mutual orders accomplish neither.

Assault on a "loved one" is as unacceptable as any other form of assault. Inappropriate mutual orders further victimize and stigmatize the one battered and absolve the batterer of all accountability for the violence.

Mutual restraining orders are appropriate only when each party petitions for protection and proves the other engaged in assaultive behavior.

Respectfully submitted,

Gail Hammer

Gail Hammer
501 West Alder #B
Missoula, Montana 59802

SB 278
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 2/3/95
BILL NO. 278

Missoula Police Association

P.O. Box 8682 • Missoula, Montana 59806 • Phone: (406) 721-4700

February 2, 1995

Senate Judiciary Committee
Fifty-Fourth Session
Senator Crippen, Chairman

RE: SUPPORT OF SENATE BILL 278

Chairman Crippen and Committee Members,

My name is Mark Muir. I am a Police Officer for the City of Missoula, representing the Missoula Police Association and the Montana Police Association. We ask that you consider the following written testimony and urge you to support the passage Senate Bill 278 into law. It is a bill that is needed in Montana.

In my years of law enforcement experience, I have seen an escalating awareness to the crimes associated with domestic violence. Violence between partners and family members has frequently resulted in serious bodily injury or in some cases violent deaths. This awareness, by all facets of the community, has brought increased pressure on all phases of law enforcement and the judicial system for tougher enforcement and penalties. Senate Bill 278 provides the tools to respond to these demands.

Many officers from the Missoula Police Association have become involved in numerous ways. Our members, across all ranks and divisions, have attempted to become more educated in the causes and dangers of domestic violence cycle if left unchecked. Several officers have volunteered their time on the Missoula Family Violence Council. Their participation has included presentation of concerns and observations, to assist with developing solutions to negate the rising trend of domestic violence. This bill takes into account the many areas that we have added input to, along with other experts in the field of domestic violence.

Another way that our officers are getting involved is through increased arrests for family/partner violence. Missoula has experienced a 14% increase during the last six months compared to the same period a year ago. This results from increased awareness of the officers in recognizing when family violence occurs and knowing that they have the support of a law that <u>prefers</u> arrest in all cases involving physical violence. The incidence of reporting is also on the rise and this is a result of the reputation that Missoula has developed in the prosecution of offenders. Increased arrests alone are not the answer to solving our problems with family/partner violence, the problem is multi-faceted and requires attack from many directions.

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A propensity to family violence can be passed from generation to generation and it is our hope that through sentencing enhancements, improvements in counseling, and victim education and protection, that this tendency will diminish.

Areas of the law that we currently feel need restructuring are addressed by SENATE BILL 278, some of those being:

1. Sentence enhancements for family/partner assaults and violation of protective orders.

   - Suggested minimum sentences, similar to current DUI law (another high profile offense - frequently resulting in death and injuries). - Initial counseling assessments to determine levels and areas of counseling needed, still maintaining the current minimum of 25 hours.

2. Moving of protective orders from marriage and divorce laws to a new section protecting crime victims of many categories without regard to relationship.

   - Many victims of violence fall outside the boundaries of marriage and divorce laws. These victims need the additional protection offered by SB 278.

3. Clarifying the victims rights/remedies under Section 46-6-602, MCA.

- These language changes should result in easier understanding by the victim and higher likelihood of follow through on their part.
- The bill also provides for health care providers to give this same notification to any suspected victim. This does require notifications to law enforcement, which poses no conflicts with confidentiality.

4. Establish rights of <u>all</u> courts to place additional restrictions against offenders in sentences.

- First and second offenders of family/partner violence laws are still considered misdemeanants but we must recognize the opportunity to re-offend and therefore allow the court to control some aspects of that offenders freedoms to obtain the objective of rehabilitation while under the courts jurisdiction.

5. Establish option for establishing local misdemeanor probation offices and authorities.

- This will allow for better monitoring of offenders completion of counseling, payment of restitution, and compliance with restrictions placed by courts for objectives of rehabilitation. Creation of this feature would be strictly optional for each court.

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One goal that must be strived for is an improvement in the recidivism rate of offenders. Family / partner violence is something that can destroy the very fiber of family existence and it needs our additional concern and support right now.

The above issues should all help address that issue and are covered in SB 278 as it is proposed to you. It is for these reasons we urge you to pass this important piece of legislation for the safety and welfare of the citizens of Montana.

Sincerely,

Mark Muir

Mark Muir, Legislative Rep
Missoula Police Association
435 Ryman
Missoula MT 59802
(W) - 406-523-4777

MONTANA WOMEN'S LOBBY

P.O. BOX 1099 HELENA, MT 59624 406·449·7917

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 2/3/95
BILL NO. 278

To: Senate Judiciary Committee
Re: Support of SB 278

The Montana Women's Lobby urges your support of SB 278. SB 278 includes several proposals that will allow the state of Montana to better respond to the problem of partner and family member assault. In renaming the offense previously called domestic abuse to partner and family member assault, we acknowledge the nature of the offense that effects three to four million American women per year. The violence done in domestic abuse cases is an assault on an individual whose suffering is not alleviated, nor whose battering is made less horrifying, by the fact that the offender was a household member. Domestic violence, according to data put out by the National Association for Female Executives, is often treated with a slap-on-the-wrist. The same violence that would be called assault when committed against a stranger, is somehow diminished, perceived as a lesser crime, when done unto a spouse or family member and called domestic abuse. We believe the renaming better describes the crime and thus, better instructs the public and police as to its violent, unacceptable nature and how we need to deal with it.

We also support, in particular, in section 24, bringing the end to mutual restraining orders made for the convenience's sake. Those who are not a threat should not be treated as one. It is wrong to blame the victim, to criminalize the victim, for purposes of simplification.

We support SB 278 with the sponsor's amendments in its entirety. We ask you to join us in that support.

Facts:

A third of female emergency room patients are battered women.

A third of all homeless women in the U.S. are fleeing domestic violence.

Thirty percent of female homicide victims are killed by their male partners.
(National Association for Female Executives)

SB 278

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 2/3/95
BILL NO. 278

2-3-95

from: Martha A. "Marty" Bethel
Hamilton City Court
223 S. 2nd
Hamilton MT 59840
(406)363-6823

Chairman Crippen, members of the Committee:

My names is Marty Bethel. I am a City Judge for the City of Hamilton. I have had the honor of serving as a member of the Montana Courts of Limited Jurisdiction for the past nine (9) years. I have been a Montana Magistrate's Association training Judge, under direction of the Supreme Court Commission on Courts of Limited Jurisdiction for the past 7 years. As such, I travel and provide the very first training available to new Judges taking the bench through election or replacement in Western Montana.

I am here today to speak in support of Senate Bill No. 278. In light of the limited time, I have decided to speak to three aspects of the proposed bill:

(1) the proposed name change;
(2) the aspect of a mandatory period of probation for batterers, and ,
(3) mandatory jail time for a conviction under family violence law.

(First) the proposed name change from "Domestic Abuse" to "Partner or Family Member Assault" is an important change to be made at this time. There exists a pervasive element of "minimization" when it comes to domestic violence. Over the past nine years, literally dozens of offenders have appeared in my Court to answer to the charge of Domestic Abuse, and when giving their admission statements, some have said, and I quote, "I don't see the big deal here, I didn't commit an ASSAULT, or anything. She's my wife!", or, "I had to get control", or "I disciplined her as you would discipline a child (in that case, he head-butted her and left a welt the size of a tennis ball). I don't think so. This is not a "socially acceptable" discipline, this is an assault. This crime often packs the elements of an assault by the letter of the law, and THEN SOME. To soft-sell the nature of this violent crime by its' placement among statutes which deal with marriage and divorce law, undermines the deterrent value of a conviction for such a violent crime. Did you know that a second offense cruelty to animals is a felony under Montana law. It requires a THIRD offense domestic violence to rise to the level of a felony, and by possibly I mean that that choice still rests within the city or county attorney's discretion as to whether to prosecute the case as a misdemeanor or a felony. WHAT IS WRONG WITH THIS PICTURE?

(second) probation is a welcome aspect of this proposed legislation. Family or Partner Violence offenders often fall through the boards in the floor, if you will, due to lack of effective "tracking" of their compliance with a sentence. The courts of limited jurisdiction attempt to "track" the compliance of domestic violence offenders, but there is a definite percentage of slackers whom we, the Courts, lose jurisdiction over before treatment is complied with or recommendations for further, or related, treatment are reported to us.

(last) I believe that mandatory jail time is necessary as an effective deterrent for this crime. The "cooling-off" period this would implement would have a chilling effect on the offender and a breath of peace for the victims. The offender's first counseling session could follow immediately thereafter, and hopefully, a positive turn would flow therefrom.

The lack of an effective deterrent the current law provides speaks to its' failure. We have a growing sickness in our troubled families. To quote from a Supreme Court case out of the State of North Carolina":

"It is better to draw the curtain, shut out the public gaze and leave the parties to forgive and forget."

Surprisingly, this Supreme Court case is from the year 1874. How chillingly familiar does this quote sound when compared to current social response, or lack of response? The damage done from this lack of intervention plagues us to this day. Our society's demand for an effective deterrent has ruled this tone of apathy out, and suggests an immediate move toward effective intervention. This proposed legislation is a constructive move toward such intervention.

You might wonder why I would take the time to come here and testify to the importance of these changes. I care about the people I serve and I, too, am a survivor.

Thank you.

Martha A. Bethel

MARTHA A.BETHEL

SENATE JUDICIARY COMMITTEE SB 278
EXHIBIT NO. 10
DATE 2/3/95
SB NO. 278

Chairman Crippen, members of the Judiciary committee, I am grateful for this opportunity to speak here today. My name is Patrina Sims and I was a victim of ~~Spouse~~ partner assault abuse for 6½ years. My husbands started beating me during the first month of our marriage. At first the beatings occured behind closed doors then in front of my children as they cringed in the corners of the room. There were times when I used my body as a shield to protect my children from harm as his fists and kicks connected to my body. The last beating left me bruised and swollen yet I fled Fortine, Montana because he threatened to beat my oldest son severely. Previous attempts to get away in my car proved hopeless. He would pull plugs & wires or grab the children to keep us from running away. The Lincoln County Crisis Line helped me seek shelter at the Domestic Violence Assistance Center in Missoula. By the time I found a home in Missoula, custody visitations were granted, allowing my ex-husband's menacing to continue his threats breaking personal property and harassing my children & I both at our home and in their school. After physically restraining me from dialing 911, I obtained a temporary Restraining Order. When police officers again responded I felt confident appropriate steps would be taken to assure us, ~~my childrens' and my safety~~ we would not be harmed.

My ex-husbands incarceration in deer lodge gives me temporary reprieve, but once he's out I would feel safer if his movements were monitored and I could obtain an order of Protection for my children and I despite the time elapsed since the last offense.

By voting yes on this bill, I truly believe, the revisions will make it less brutal for all victims. Please vote yes.

Thank you for allowing me to be heard.

Sincerely,
Patrina Sims
Missoula, MT 59801

DOMESTIC VIOLENCE - HAS ANY THING CHANGED IN TWENTY YEARS?

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 2/3/95
BILL NO. SB 228

By Jan Healy, R.N., B.S.N., C.E.N.

Has anything changed in twenty years in the way society views domestic violence? How about the judiciary and law enforcement, has their attitude changed? The health care providers, the mental health workers, the social service agencies, the clergy, has their attitude changed? When you see today's news headlines, it makes you wonder at the number of women who have "fallen through the cracks" of the system that is supposed to protect and help them, and as a result have been brutally assaulted and murdered. Why does abuse have to reach the sensational headline status before attention is paid ever so briefly to the victims of the abuse and their rights?

Emotional abuse starts long before the physical assault. Emotional abuse is the cruelest and longest lasting of all the forms of abuse. Emotional abuse scars the heart and damages the soul according to Andrew Vachss, noted author and attorney. Like cancer emotional abuse does its most dangerous work internally. Yet little attention is paid until the physical assaults cause serious physical injury to the victim, the batterer or both. Why does society not respond sooner to avert tragedy? The following story is a prime example.

The other day I visited with my former attorney who is now a judge. We chatted about my children, where they are and how they are doing. Then we talked of the events leading up to and that occurred after the court proceedings I was requesting information on. Toward the end of our visit the judge made the comment that perhaps if he had been a little more adversarial in my behalf, that tragedy could have been averted twenty years ago. But this story could have happened yesterday.

It was on March 23, 1974, Saturday afternoon at 12:20, that my husband of six years broke down the locked front door of my home and in front of our two small children, ages five and nine years, shot me seven times and then killed himself. It was the culmination of many threats and acts of violence that escalated into that final act. There were many beatings over trivial things, bouquets of red roses, apologies and promises that it would never happen again, if only I were thinner, a better wife, mother, housekeeper. His rationalizations went on and on. First came the emotional abuse with continual put-downs and attempts to completely control me. My husband was a manipulator par excellence. He manipulated my and my belief in the sanctity of marriage and a traditional family life. But no matter what I did, it was not right, nor was it enough. I sought help and counsel from my church leaders where I was affectionately patted on the hand and told to, "Try a little harder dear, be more submissive and your marriage will work." I am sure they were thinking love can conquer all. But this re-enforced my husband's blaming me for his battering and increased my feelings of failure and responsibility for the abuse. My self esteem was so low, I felt I had no rights as a wife, mother or person. It reached the point that even though I was employed full time, my husband would give me $75 to buy groceries. Then after purchasing the groceries, I would give my husband the change. He then would check off the items on the grocery receipt as I put them away. He felt all money in the household was his and he controlled it as he saw fit.

When the physical abuse started, I learned to wear long sleeved blouses and dark hose or pants to cover the bruises on my arms and legs. I did not want anyone to know. I did not tell anyone because I was so ashamed. This kind of

thing did not happen to anyone I knew. There must be something wrong with me. I lived isolated in constant fear. But my friends at work knew and protected me from being questioned too closely by others about my black eyes. Finally one night after drinking he came home, raped me, beat me and then threw me out of the house in my pajamas. It was the end. I could take no more. I told my husband either he get help or I would leave and take the children with me. He then committed himself voluntarily to Warm Springs State Hospital for treatment for ninety days. Toward the end of that ninety day period, the psychiatrist from Warms Springs called me one evening at work. He informed me my husband had told him that if he was released from Warm Springs, he would come back to Billings and kill my children and me. The psychiatrist said he was obligated by law to warn me, but that was all he could do. Because my husband was there on a voluntary commitment they could not hold him once the ninety days were up. I will never forget the cold terror that gripped me at that moment and from then on became my constant companion. I felt totally helpless and exposed. No one could or would protect me or my children from this man. The nightmare intensified.

My husband was released from Warm Springs and instructed to stay away from my children, my home and me. He also was to report to the local Mental Health Center for further follow up counseling and drug therapy.

Needless to say, he did not comply with his treatment reqime. Within a day of returning to Billings, he was back at my home harassing me. I never knew from one moment to the next when he was going to show up threatening me with guns and knives at all hours of the day and night. I was held at gun point on several occasions. Then when all the guns were taken by the sheriff's deputies, I was held at knife point while my husband threatened to kill himself if I did not let him move back in the house with me. He was there so often the sheriff deputies and I had a signal worked out. They would just "stop by" to see how things were if they saw a certain light turned on (it was a light I never turned on otherwise). I refused to let my husband move back in. Strangely enough, I remained calm. Each time he showed up I called the police and tried to file a complaint. However, some of the times when I would go to the sheriff's office to file a follow up complaint, I would be told there was no report filed by the officers so I could not file a complaint. Nothing worked to keep him away. I obtained a restraining order to "legally" keep him from harassing me. Still he came back!

Finally in desperation, I went against my religious beliefs and filed for divorce. I would not have had the courage had it not been for a counselor at the Mental Health Center. He had called and suggested I come in for some supportive counseling. When I went in to see him, he validated my feelings that I was being beaten unjustly -- that no one has the right to beat anyone!

At this time, December 1973, I was working full time and taking pre-nursing courses at a local college. I had been accepted into the School of Nursing of Montana State University, and was scheduled to start classes winter quarter, January, 1974. This meant my children and I would have to move 144 miles away to Bozeman. I thought that at least here we would be safe. Besides, there was to be absolutely no contact with my husband except through my attorney. He was not even to know what town we were in.

My husband had been in and out of jail and the psychiatric unit at Deaconess Medical Center many times. Yet, after each release he came back to harass and

beat me day or night. I lived with constant mortal fear every moment of every hour of every day. So, on the advice of his psychiatric social worker and because of my husband's persistent non compliance with his treatment regime and I had found him hiding in the crawl space under my house with a loaded 357 magnum pistol, I started commitment proceedings.

At his trial he was represented by an attorney who was more concerned with protecting my husband's civil rights than his mental health. An attorney who had no concern for the safety of my children or me. My husband was interviewed for an hour by a psychiatrist who did not know his case at all because the psychiatrist in charge of my husband's case was out of town at the time. My husband was a highly intelligent professional person who knew how to play the game and work the system. He used to laugh about how he could fool them. And he did it this time too. The court turned him loose January 3, 1974.

Within a month, on a Saturday afternoon, when my children and I returned to our apartment in the married student housing at M.S.U. after a day of skiing, he was on our doorstep. That was the only time the terror got the best of me. I had thought we were safe. I had tried so hard to follow the advice given to me by the police, the psychiatric social worker and my attorney. Yet not even the law or hiding could keep him away from us. I managed to get the children inside the apartment and lock the door. Thank God it was a metal door so his pounding did no harm. I was hysterical and crying when I called the police for help. They told me I did not have a restraining order in Gallatin County so there was nothing they could do. I pleaded with them to call the Yellowstone County Sheriff's Department and my attorney. I then called some friends from church. The police came. My husband left. My friends arrived and took my children and me home with them for the night. I could not stop crying. After that I neither saw nor heard from my husband until the time of the shooting over a month later.

Winter quarter at M.S.U. ended. I was so proud and happy I had received my M.S.U. nursing cap signifying I was ready to start my clinical training. That was a Friday. That night my children and I returned to our home in Billings about 10:30 unannounced. The next morning I had a neighbor girl come and baby-sit my children while I met with my attorney concerning the divorce proceedings that were to take place the following week. I had just returned home from the meeting when my husband knocked down the locked front door of my home. His eyes were blood shot and there was the smell of beer on his breath. I looked in his eyes. I knew this time was different -- he was going to kill us! My son screamed, "He has a gun! He has a gun!" I shoved my son out the hole in wall that had been the door. The babysitter took my daughter out the family room door. As I turned back around to face my husband, he shot me three times point blank in the abdomen, then once in each side of the chest. By this time I too was out the front door. I fell off the front steps and he shot me again once in each hip. Mike then killed himself with one shot to the head. I was so confused. His last words to me as he stood over me shooting me were, "I am going to fix you so no one will ever think you are beautiful or love you again." I did not understand. He was the one that ran aound and had the extra-marital affairs. I was the one who was forgiving and stayed home taking care of the children and the home.

Although I lived when the doctors said I would not, went skiing six months after the doctors said I would not walk because my right let was paralyzed by femoral nerve palsy due to a partially severed femoral nerve, graduated from

M.S.U. with a Bachelor of Science in Nursing on June 10, 1977, and have worked as a registered nurse for the past seventeen years, I still have problems with my self esteem and have a difficult time trusting people. I still have my strong religious beliefs and have raised two outstanding children by myself. My son, Jim, is married to a wonderful young woman and is the father of the world's cutest three year old boy and eight month old baby girl. Jim is currently on a full ride scholarship to Stanford University Medical School and is in his third year of their M.D./Ph.D. program. Michelle, my daughter, is a senior at Brigham Young University majoring in psychology. This summer she married a sweet king young man. Both children served outstanding missions for our church, Jim in Denmark, Michelle in South Korea. Despite the success in raising my children and my nurisng career, I could never quite understand all that went on during those traumatic years. I felt I must be deeply flawed that this had happened to me. There must have been something more I could have done. I must have failed.

The understanding that I was not flawed, that I did not fail, did not sta for sixteen years. Not until May 1990 when I attended the first McGuire Memo Conference on Family Violence. As I sat there listening to the lectures, it was as though a knot deep within my soul was untied and I began to understand at last. There was noting I could do to control my husband's behavior or prevent his battering. He was the one responsible for his actions. I was so relieved tears ran down my cheeks as I sat there among my colleagues from the emergency department.

Now I am committed to the education of the public - both lay and professional - in the hopes that other women will not have to live with the terror and confusion that were a part of my life for so many years. For this reason I share my story. Frequently I am asked if I have any anger about what I have been through. I would not call it anger -- it is rage. A rage that has been channeled into productive means. No one will ever hurt me or my children that way again! No one should have to go through what we went through! My children and I had fallen through the cracks of the system. Unfortunately today there are still thousands of stories similar to mine. So I ask, "Has anything changed in twenty years? Why are nearly 4,000 women being murdered each year by their spouses, former spouses, boyfriends or ex-boyfriends?" According to the National Coalition Against Domestic Abuse 4,000,000 women each year are battered so severely they require police or medical assistance.

Somethings have changed in twenty years. Most states have laws making domestic abuse a misdemeanor. Law enforcement goes on the domestic abuse call and makes the arrest. Unfortunately it is to the same residence, involving the same people again and again, frustrating the officers, prosecutors and judges involved.

The key to making substantial changes in community attitude about domestic is EDUCATION. Educating everyone from the judiciary, to the prosecutor, to the law officer, to the health care professionals, to the clergy, to the layman on the street. Orders of Protection must be stringently enforced. Sentences once the batterer is convicted must be stringently enforced. Victims must be informed of their rights by health care professionals as well as law officers. WE MUST DO EVERYTHING IN OUR POWER TO KEEP THE VICTIMS OF DOMESTIC VIOLENCE SAFE!!! We must assist them in accessing social service agencies, child care and legal assistance. WE MUST HAVE EARLIER INTERVENTION!!

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 2/3/95
BILL NO. SB 278

Testimony on Senate Bill 278

February 3, 1994

Judy A. Williams, Billings, MT

Chairman Crippen and members of the Senate Judiciary Committee:

Thank you for allowing me to speak to you today. My name is Judy Williams. I am a lawyer from Billings, a 1977 graduate of MSU-Billings and a 1985 graduate of the University of Montana School of Law. Although I am currently working for the State Bar of Montana as coordinator of a pro bono project, the focus of my law practice with Montana Legal Services for the previous nine years has been representing victims of family violence.

First, I wish to note that I favor the proposed name changes in the bill before you: family or partner assault calls this crime by its proper name: assault. Order of protection, aside from being more descriptive, is specific. No one understands what preliminary injunctions are.

Although many aspects of the bill before you are noteworthy, the rest of my testimony will be confined to the issue of prohibiting mutual orders of protection, and the prohibition against arresting a petitioner for alleged violations of an order of protection. By adopting those two specific changes you will do much to improve the process of protecting family assault victims.

Too often, our over-worked and frustrated law enforcement personnel must answer family assault calls. Where a protective order is in place, the officer must decide whether there has been a violation and, if so, whether to make an arrest. Too often, the facts are muddled. Frequently, the respondent (restrained party) alleges that, although he may have violated an order, it was because of an invitation by the petitioner (victim). In too many cases for me to count, the victim is arrested by the officer. That should not happen.

Seeking protection from the Courts is one of the most difficult things a family assault victim ever does. It exposes a very private and usually embarrassing problems to others, often for the first time. Victims in need of protection are in no position to argue with a judge who often states it is the Court's policy to make protective orders mutual. But problems with mutual orders include:

1. Violation of Due Process: the opposing party/assaulter does not need to fill out the petition and affidavit the victim did, so the victim has no notice of the claims against her and no opportunity to defend herself against such claims.

2. If law enforcement assistance is necessary, responding

officers have difficulty determining who the real victim is when a protective order is mutual. On more than a few occasions in Billings, when confronted with such a dilemma, officers have arrested both parties, resulting in even more trauma to the real victim and any children, who find themselves in foster care.

3. Mutual orders suggest that the victim is somehow responsible for what happened to them. The victim goes to the Court for help and is essentially told: we will give you an order for protection, but you have to live under the same restraints as the person who harmed you.

The absurdity of this is, perhaps, best illustrated by a short analogy. Imagine you are driving home from work today and you are hit by a drunk driver. Your car is demolished, your arm is broken, and you are generally shaken up and bruised. The other driver is arrested and charged with Driving Under the Influence of alcohol.

You go to Court to testify against the other driver, who is found guilty, loses her driver's license, and is ordered to pay you restitution for the damages to your car and your medical expenses. After sentencing the drunk driver, the Judge turns to you and says that even though the accident was not your fault, if you had not been on the street you would not have been in this accident. So that you will not be in another accident and you will take this situation seriously, you will also lose your driver's license for a year.

When the situation is a family assault victim seeking protection, the circumstances are far more serious than in my illustration. Because, a mutual protective order also implies that the offender is not responsible for what he did.

Judges like mutual orders because many of them do not understand the dynamics of family violence and they think that the only goal of a retraining order is to keep the parties apart. A mutual order is easy. It is also wrong. Sometimes the only way to right a wrong is to pass a law. This is one of those times.

The only way for victims seeking self-help protection orders to avoid the mutual order trap is for you to legislate its prohibition.

I urge you to pass this bill, as amended.

Thank you for your time and consideration.

ROCKY MOUNTAIN PSYCHOLOGICAL & ADDICTION SERVICES

210 N. Higgins Avenue, Suite 202 Missoula, MT 59802 (406) 721-0909 fax (406) 721-0917

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 2/3/95
BILL NO. 278

January 30, 1995

TO: Chairman Crippen

RE: Senate Bill 278

Dear Chairman:

I am writing in support of Proposal L.C. 265, specifically to address the need for a counseling assessment prior to counseling for Domestic Abuse. As a practitioner providing batterers' treatment, it has been my experience that the current 25 hours is, in many cases, not sufficient to lower the risk of re-offending. In addition, the absence of counseling to address other complicating factors such as chemical dependency leaves the abuser at a significantly higher level of risk for repeat offense.

National statistics show 86% of domestic abuse cases have substance abuse involved in the incident. As a Montana State Certified Chemical Dependency counselor, it is likely I have had a greater awareness than many batterers' counselors of the frequency of substance abuse issues among my battering clients. My experience over the past eight years supports national statistics. Furthermore, it has been my experience that the skills taught in domestic abuse courses are essentially useless if the client has a substance abuse problem. It is difficult to incorporate skills that call for some sense of judgement and reason when an individual is intoxicated.

Aside from the issue of chemical dependency, there are several cases of domestic abuse in which the standard 25 hours of counsel-ing, now allowed by law, is insufficient. For some of these men and women, 25 hours may only begin to break the denial. Many of these individuals' patterns of abuse are so long-standing and so ingrained that to expect major change in this amount of time is totally unreasonable and unfair to the client.

In closing, I urge you to seriously consider amending the current domestic violence laws to support counseling assessments up front and enforcement of any recommendations made by the counselor. I do not see this as punishment. As a counselor, my

interest in this matter is providing the best possible opportunity for positive change with domestic abuse clients. My experience suggests that many of these people do want to change, yet it almost always takes legal intervention to start the ball rolling. The current laws are just not enough!

Thank you for your careful consideration of this matter.

Respectfully,

DeEtte A. Lundberg, BS, CCDC

Montana Shooting Sports Association

P.O. Box 4924 • Missoula, Montana 59806 • (406) 549-1252 • FAX (406) 251-3824

Asserting the Rights of Gun Owners in Montana

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 14
DATE 2/3/95
BILL NO. SB 278

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Sidney
Brian Sipe
Kalispell
Judy Woolley
Plains

January 31, 1995

Diane Tripp
464 Vigilante Drive
Helena, Montana 59601

Dear Diane,

This letter is a conditional letter of acceptance of the provisions of SB 278. First, I want to thank you for all the hard work you, personally, have put in on making this bill work. It seems to be a good effort, and law abiding gun owners sympathize with your goals.

Attached is a copy of the amendments to LC265, prepared by Valencia Lane on January 24th, and provided to me by yourself to cure concerns I have had about the bill. You have assured me that these amendments will be offered by the sponsor upon hearing in committee as an essential part of the bill. If these amendments are accepted and applied by the committee, MSSA has no objection to the bill.

However, should these amendments either not be offered to the committee, or not be applied to the bill by the committee, the official MSSA position would be one of opposition to the bill.

With the attached amendments applied, I hope SB 278 fares well. You are encouraged to share a copy of this letter with the committee when you testify concerning the bill.

Sincerely yours,

Gary S. Marbut
President

cc: Senator Larry Baer

unedited

Amendments to LC 265
First Reading Copy

Requested by Senator Brooke
For the Committee on ?

Prepared by Valencia Lane
January 24, 1995

1. Page 12, line 2.
Following: "offender"
Strike: "charged or"

2. Page 12, line 3.
Following: "of"
Strike: "a"
Insert: "the"
Following: "firearm"
Insert: "used in the assault"

3. Page 12, lines 3 and 4.
Following: "The court may" on line 3
Strike: remainder of line 3 through "sentence" on line 4
Insert: "enforce 45-8-323 if a firearm was used in the assault"

4. Page 15, line 9.
Following: "using"
Strike: "any"
Insert: "the"
Following: "firearm"
Insert: "used in the assault"

5. Page 17, line 17.
Following: "seize"
Strike: "any"
Insert: "the"

6. Page 17, lines 17 and 18.
Following: "used" on line 17
Strike: remainder of line 17 through "used" on line 18

7. Page 17, line 20.
Following: "take"
Strike: "any"
Insert: "reasonable"

8. Page 17, line 25.
Following: "until"
Insert: "acquittal or"

9. Page 18, line 17.
Following: "using"
Strike: "any"
Insert: "the"
Following: "firearm"

EXHIBIT 14
DATE 2-3-95
SB 278

Insert: "used in the assault"

10. Page 21, line 2.
Following: "using"
Strike: "a"
Insert: "the"
Following: "firearm"
Insert: "used in the assault"

YWCA

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 15
DATE 2/3/95
BILL NO. 278

1130 West Broadway
Missoula, MT 59802
(406) 543-6691

February 1, 1995

Dear Chairman Crippen and members of the committee:

I am writing in support of Senate Bill 278 and urge you to vote yes on this very important piece of legislation.

It is important that we have individual filing for TRO's. Currently, when "Jane Doe" files for a TRO, "John Doe" can also ask that it be made mutual at the same hearing. He is not asked for witnesses or documentation and his allegations do not have to be substantiated. He (and in some cases she) needs to go through the same process as his/her partner in filing for a TRO.

In changing the name Domestic Abuse to Partner/family member assault - I feel this is a more accurate description of events than Domestic Abuse. Domestic has many meanings and brings up many thoughts and feelings - warmth, home, comfort etc. Abuse also has many applications. This is almost an oxymoron. The word "domestic" minimizes the seriousness of this crime. There is no question as to the meaning of partner and family member assault. With the change in nomenclature - Domestic Violence is treated as any other assault to a person crime - as it should be.

Thank you for your time in considering this letter.

Sincerely,

Dodie Moquin

Dodie Moquin, Case Manager, Domestic Violence Assistance Center

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 16
DATE 2/3/95
BILL NO. SB 278

DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

STAN STEPHENS, GOVERNOR

1539 11TH AVENUE

STATE OF MONTANA

(406) 444-3930 FAX (406) 444-4920

HELENA, MONTANA 59620-1301

January 26, 1995

Judy Wang
Missoula City Attorney Office
Missoula Family Violence Council Chair
Missoula City Hall
435 Ryman
Missoula, MT 59802

Dear Ms. Wang,

Thank you for sending me a copy of the proposed legislation regarding family violence and DUI offenders and establishing of local misdemeanor probation officers to supervise these offenders.

I support the proposed legislation and view as very positive the plan to have these serious misdemeanor offenders supervised by probation officers. In both the cases of family violence and repeat DUI offenses, the offenders often pose a serious threat to community safety. This is even more true when they fail to get required counseling or follow court imposed conditions of release. I view monitoring for compliance an essential part of any effective probation in these cases.

As Regional Supervisor for State Adult Probation and Parole, I see as a side benefit to this misdemeanor supervision, the potential to divert offenders prior to their being further immersed into the Criminal Justice System and possibly the State Prison. Many of the offenders we see first came to the attention of the Criminal Justice System via a DUI or family violence issues.

Thanks again for sharing with me this proposed legislation and feel free to use this letter as support for your proposal.

Sincerely,

SAM LEMAICH, Regional Supervisor
Probation & Parole Officer
127 E. Main, Suite 303
Missoula, MT 59802
(406) 549-0022

RECEIVED
1-27-95

DATE 2/3/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SJR 10
HB 26
SB 278

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Sherman V Lohn	SesF	SJR #10		X
Russell B Hill	MT Trial Lawyers	HB 26	✓	
Jim Obenhofer	MT Chiefs of Police Assoc	278	✓	
Mark Muir	Missoula Police Assn. Montana Police Assn.	278	✓	
Gene Kiser	MBCC	278	✓	
Jan Healy, R.N	Billings Area Family Violence Task Force	278	✓	
Patrina Sims	M. County Fam. Violence Council	278	✓	
Ellyn Guenthner	YWCA Gateway House	278	✓	
Mary Healy	Support - M.C.F.V.C. / Private Citizen	278	-	
Martha D. Bethel	City Judge (Ret.) / Victim Witness Coordinator - Counsel	Domestic Violence 278	✓	
Judy A. Williams	Montana Legal Services	278	✓	
Deborah A. Anspach	MT. Legal Services, Billings	278	✓	
Anita Conyell	YWCA Dom. Vio. Ctr.	278	✓	
Kelly Slatterly-Robinsm	YWCA Dom Vio Ctr Missoula	278	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 2/3/95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 278

H 26

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Klaus D. Stte	Mont. Legal Services	SB 278	✓	
Janet Cahill	Mont Coalition Against Domestic Violence	SB 278	✓	
Judith Wing	Missoula City Attorney's Office / Missoula Family Violence Council	SB 278	✓	
Jerre Loendorf	Adv. Rights Assn	H 26	✓	
Amy Pfeifer	Women's Section of State Bar	SB 278	✓	
SHARON HOFF	MT CATHOLIC CONF	SB 278	✓	
Kate Cholewa	MT Womens Lobby	SB 278	✓	
Russell B Hill	MT Trial Lawyers	STR 10		?
John Connor	MT County Atty Assn	SB 278	✓	
Beth Baker	Dept of Justice	SB 278	✓	
Greg Frazer	Self	SB 278	✓	
Diane Tripp	Mont Family Violence Council	SB 278	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on February 7, 1995, at 10:00 AM

ROLL CALL

Members Present:
Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 286, SB 266, SJR 6
Executive Action: SB 278, SB 218

EXECUTIVE ACTION ON SB 278

Discussion: Amendments requested by the sponsor were handed out at the hearing. The amendments related to firearms. They narrowed the bill to state the police on the scene can seize only the firearm used in the assault.

SENATOR RIC HOLDEN asked **Valencia Lane** if it was her understanding that these amendments referred to only the firearm being used and not any other guns. **Ms. Lane** stated it would limit what the police could seize to any firearm being used in the assault itself.

CHAIRMAN BRUCE CRIPPEN commented that the amendment read "firearm used in the assault". This person could be charged with assault with a deadly weapon.

SENATOR LARRY BAER stated he worked on these amendments and he is satisfied with the amendments negating any infringement on second amendment rights.

SENATOR MIKE HALLIGAN commented his concern is for his clients who own weapons. The court, after the person is picked up, simply requests that the weapons be placed in a safe place. He fears that this may keep people incarcerated if there are other weapons in the home. **John Connor, Department of Justice,** stated that was an aspect he hadn't considered. The concern he has as a prosecutor is if there is more than one weapon in the house there is no guarantee that some other weapon can't be used to continue the assault. He feels that an officer, under terms of an arrest, has the authority to seize whatever he or she thinks is appropriate at the time of the arrest. The whole intent is to protect the victim.

CHAIRMAN CRIPPEN questioned what would prevent the offender from borrowing or buying a gun. The whole point is to get the offender out of the house. If the offender is inclined to do it again, there is no way to keep the family safe. **Mr. Connor** stated he was looking at this from the protection of the victim. When looking at guns in the home, you are talking about something once removed. **CHAIRMAN CRIPPEN** further commented that the offender could use knives, hammers, or any other dangerous weapon. **Mr. Connor** stated that is why they suggested leaving the language at firearm instead of weapon. Anything could be defined as a weapon.

SENATOR BAER stated this is a dead bill unless the amendments are incorporated into it. You can't infringe upon someone's constitutional rights from a prosecutorial standpoint because of your interest in protecting the victim. You may take away the gun and leave the rest alone.

SENATOR SUE BARTLETT stated she understood if the offender had a concealed weapon permit the court may enforce a different statute if a firearm was used in the assault. The other statute has to do with revoking or denying the concealed weapon permit, 45-8-323. In this instance a revocation would occur if circumstances arise that would require the sheriff to refuse to grant the permittee an original license. One of the grounds on which a permittee could be denied an original license is if the individual has been convicted in any state or federal court of a crime punishable by more than one year of incarceration or regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, sexual intercourse, or contact without consent. She would want to know

that the crime of domestic violence would fall within that grouping so that there are grounds for irrevocation if the court feels that is warranted.

SENATOR STEVE DOHERTY asked **Mr. Connor** to comment. **Mr. Connor** stated that the draft of the bill had a subsection, which was taken out and that they objected to, which said "can seize any weapons which are in the house." They pointed out that law enforcement could not take something unless it was reasonably related to the offense. They would like to use the language in the law now, if the weapon was used or threatened to be used in the assault, it should be seized. Only the weapon which was threatened to be used or used in the assault would be seized.

SENATOR BARTLETT stated that from a prosecutorial point of view the words "used" or "threatened to be used" in the alleged assault are words **Mr. Connor** would prefer to see remain in the bill and the words "or threatened to be used" are stricken by the amendments.

SENATOR AL BISHOP stated that when dealing with a bank robber they would be dealing with the tools of his trade. He is not sure anything is being accomplished with one gun being taken from a home if there are more weapons in the home.

Mr. Connor commented the best way to handle this would be to take (1) out entirely. The officer can decide under the circumstances whether the weapon was used and, if it was used, if it needs to be taken.

SENATOR BAER commented they were dealing with an alleged assault. If it can be substantiated that he did use the weapon to threaten, the weapon should be taken into custody. There is far too much room for abuse to take the entire gun collection.

CHAIRMAN CRIPPEN stated that if a weapon is threatened to be used, the weapon should be taken.

Motion/Vote: **SENATOR LORENTS GROSFIELD MOVED TO ADOPT ALL SENATOR BROOKE'S AMENDMENTS EXCEPT NO. 6.** The motion **CARRIED UNANIMOUSLY** on oral vote.

Motion: **SENATOR DOHERTY** moved to **AMEND SB 278.**

Discussion: **SENATOR DOHERTY** referred to page 10, lines 20 and 21, and suggested striking the words "with a person of the opposite sex". The sentence would end with the word "relationship". This would mean that same sex relationships would be covered in domestic abuse. He has a letter from the Missoula County Police Department in which the police chief indicated that it is a fact of life that we should acknowledge domestic abuse in same sex relationships. He also had a letter from the Park County Attorney in Livingston in which she recommends the deletion of those words because she has had

complaints made to her office about domestic violence and stalking between partners of the same sex.

SENATOR VIVIAN BROOKE stated same sex relationships should be protected under partner and family assault.

CHAIRMAN CRIPPEN asked **Mr. Connor** what the current law was when there was violence, including a weapon to threaten, between individuals of the same sex. **Mr. Connor** stated there are other statutes from misdemeanor assault to aggravated assault.

SENATOR BARTLETT asked **Mr. Connor** if the other statutes also offered restraining orders and required counseling. **Mr. Connor** stated they did not. The only thing which might be possible is for the court to impose some sort of condition as a bond condition.

CHAIRMAN CRIPPEN clarified the amendment. If there are two individuals of the same sex living together it brings them into the domestic abuse law. He cannot stand by this bill if the amendment is put in because it goes way beyond the intent of the bill as originally drafted.

Vote: The motion **FAILED 3-8** on roll call vote.

Discussion: **SENATOR REINY JABS** questioned why the offender would be able to keep his gun permit if he was convicted of domestic abuse with a weapon. **SENATOR BAER** stated that anyone who possesses a concealed weapon permit does so under privilege and if they violate the law with a firearm, they immediately have their permit revoked.

SENATOR LORENTS GROSFIELD stated 45-8-323 reads that a permit to carry a concealed weapon may be revoked or its renewal denied by the sheriff of the county in which the permittee resides if circumstances arise that would require the sheriff to refuse to grant the permittee an original license.

SENATOR SHARON ESTRADA stated she had a problem with page 10, line 19, "persons who have a child in common". She would like it to read "persons who have a child legally in common".

SENATOR BROOKE commented that there was a case in Missoula where two people had a child in common. They had no relationship at all. The man was stalking the woman. The city attorney was familiar with this case and felt this definition was not broad enough to cover that situation.

Motion/Vote: **SENATOR BARTLETT MOVED SB 278 DO PASS AS AMENDED.**

Discussion: **SENATOR HOLDEN** stated counseling sessions could go on for a long time. Where is the line drawn?

CHAIRMAN CRIPPEN stated the way he read the bill it gave the judge the discretion to look at the financial resources and future ability of the offender.

SENATOR GROSFIELD asked what "counseling costs" would mean.

Diane Tripp commented there was a required 25 hours of counseling for the abuser. The rest of the counseling is for the victim as the court sees fit if the abuser is able to pay. They are trying to make the abuser accountable for his or her actions.

SENATOR BAER stated it was in the jurisdiction of the court to award restitutionary costs. The terms "counseling costs" would be equitably determined by the judge at the time and limited to those costs which he felt were appropriate for restitution to the victim.

{Tape: 1; Side B}

SENATOR BARTLETT stated that **SENATOR HOLDEN'S** suggested amendment, page 11, line 29, striking all the words "in addition to required counseling and fines" might clarify the matter. The provisions in (5) are in addition to any sentence imposed under (3) and (4). Subsection 3 is the fine and jail time. Subsection 4 is the required counseling. Lines 5 and 6, (4) (a) already says "An offender convicted of partner or family member assault shall be required to pay for and complete a counseling assessment . . . a minimum of 25 hours of counseling." This would limit (5) to payment for costs incurred by the victim. If the court finds the offender able to pay he could be ordered to do so.

Motion\Vote: **SENATOR HOLDEN MOVED TO AMEND SB 278.** On page 11, line 29, after the word cost, he suggested putting a period and striking the rest of the sentence. The motion **CARRIED UNANIMOUSLY** on oral vote.

Discussion: **SENATOR HOLDEN** referring to page 18, line 1, asked if "shall" should be changed to "may". **SENATOR BROOKE** stated that would be no problem. Under federal regulations for Medicare and Medicaid, domestic violence assistance is now being required. On the next line, "any legal rights" the word "any" could be deleted. **Valencia Lane** stated that the notice requirements which start on page 17, Section 20, is a notice requirement that health care providers would give. There is a very similar requirement on page 14 which is a Notice of Rights that peace officers have to give when they arrest a suspected abuser.

Motion\Vote: **SENATOR DOHERTY MOVED TO AMEND SB 278.** Page 18, line 1, the word "shall" would be stricken and the word "may" inserted. The motion **CARRIED** on oral vote with **SENATORS BAER and CHAIRMAN CRIPPEN voting "NO".**

Discussion: **Valencia Lane** clarified the amendments. Page 18, line 1, to change "shall" to "may" in the notice that health care providers have to provide, however, this is mandatory on page 14, in the Notice of Rights to Victims which peace officers have to give.

Motion\Vote: **SENATOR HALLIGAN MOVED SB 278 DO PASS AS AMENDED.** The motion **CARRIED UNANIMOUSLY** on oral vote.

EXECUTIVE ACTION ON SB 218

Motion: **SENATOR HALLIGAN MOVED TO AMEND SB 218.**

Discussion: **CHAIRMAN CRIPPEN** explained the amendments, **EXHIBIT 1**

One of the reasons the landlords brought this bill is that courts have been interpreting that the time involved in all instances was that the tenant had 90 days. **CHAIRMAN CRIPPEN** stated that was not what they agreed upon two years ago. The 90 days was for page 4, (j) which referred to a legitimate business reason. If there is a change in use of land, then the time was extended to 180 days. There are times when nonpayment of rent required a shorter period of time. Page 3, Section 3 was eliminated to handle this. The crux of the matter was on page 4. They went through the bill and stated what the time limitations were. On page 4, line 2, (1) A landlord of a mobile home park may terminate a rental agreement only by the following procedure set forth in 70-24-422 except as specifically provided in this section. That is fourteen days unless stated otherwise. There are exclusions to the 14 day time limit. Nonpayment of rent would allow for 15 days. In the late payment of rent, if this has occurred three or more times within a 12 month period, the landlord gives notice and the tenant has 90 days to terminate. If this section has been violated, they must move immediately. When there has been a violation of a mobile home park rule which creates immediate threat to health and safety, the landlord has the right to demand that situation be remedied within a 24 hour period. Disorderly conduct would be a 14 day time period. Conviction of a state or local ordinance violation which would be detrimental to the health, safety or welfare of other residents would fall into the 14 day time period.

Greg Van Horst, Montana Housing Providers, stated that with respect to 436, the amendment clears up some specific issues with regard to notices of termination. He had some concerns with the amendments. On page 2, with respect to a situation where the trailer is owned by the renter and in fact the renter simply rents space in a mobile home park, he understands that situation. There are certain circumstances where a pet could be causing damage to the real property. He has a problem with the suggestion that only so many people can reside in the trailer, even though the trailer is owned by the tenant. The individual owning the real property, services that trailer with respect to sewage and water. Under those circumstances there are specific

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 2/7/95 BILL NO. 228 NUMBER 1

MOTION: Doherty - amend

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN		✓
LARRY BAER		✓
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN		✓
STEVE DOHERTY	✓	
SHARON ESTRADA		✓
LORENTS GROSFIELD		✓
MIKE HALLIGAN	✓	
RIC HOLDEN		✓
REINY JABS		✓
LINDA NELSON		✓

SEN:1995
wp:rlclvote.man

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SENATE STANDING COMMITTEE REPORT

February 7, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration SB 278 (first reading copy -- white), respectfully report that SB 278 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 11, line 29.
Following: "costs"
Strike: "in addition to required counseling and fines"

2. Page 12, line 2.
Following: "offender"
Strike: "charged or"

3. Page 12, line 3.
Following: "of"
Strike: "a"
Insert: "the"
Following: "firearm"
Insert: "used in the assault"

4. Page 12, lines 3 and 4.
Following: "The court may" on line 3
Strike: remainder of line 3 through "sentence" on line 4
Insert: "enforce 45-8-323 if a firearm was used in the assault"

5. Page 15, line 9.
Following: "using"
Strike: "any"
Insert: "the"
Following: "firearm"
Insert: "used in the assault"

6. Page 17, line 17.
Following: "seize"
Strike: "any"
Insert: "the"

7. Page 17, line 20.
Following: "take"
Strike: "any"
Insert: "reasonable"

Amd. Coord.
Sec. of Senate

8. Page 17, line 25.
Following: "until"
Insert: "acquittal or until"

9. Page 18, line 1.
Strike: "shall"
Insert: "may"

10. Page 18, line 17.
Following: "using"
Strike: "any"
Insert: "the"
Following: "firearm"
Insert: "used in the assault"

11. Page 21, line 2.
Following: "using"
Strike: "a"
Insert: "the"
Following: "firearm"
Insert: "used in the assault"

-END-

- BILL NO -	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
	2/20	3/03		CONCUR 3/13 VOTE: 16-2		3/15
SB0218	CHRISTIAENS, CHRIS		REVISE LANDLORD TENANT LAWS			
	2/15	3/02		CONCUR 3/15 VOTE: 17-2		3/16
SB0229	HARGROVE, DON		CRIMINAL FORFEITURE OF PROPERTY FOR DRUG OFFENSE; OFFENSE TO POSSESS			
	2/02	3/06		CONCUR AS AMENDED 3/14 VOTE: 18-1		3/15
SB0237	BISHOP, AL		STATE OPEN CONTAINER LAW			
	2/20	3/14		TIE VOTE 3/22 VOTE: 9-9		
SB0272	GROSFIELD, LORENTS		REVISE FILING REQUIREMENTS OF SURVIVING SPOUSE OF JOINT TENANCY			
	2/06	3/08		CONCUR 3/15 VOTE: 19-0		3/16
SB0278	BROOKE, VIVIAN		REVISE DOMESTIC VIOLENCE LAWS			
	2/15	3/07		CONCUR 3/9 VOTE: 18-0		3/13
SB0286	FRANKLIN, EVE		COURT-ORDERED COSTS AND COUNSEL FEES IN PATERNITY PROCEEDINGS			
	2/15	3/03		CONCUR 3/9 VOTE: 18-0		3/10
SB0292	BROWN, BOB		WOMAN'S RIGHT TO KNOW CONCERNING ABORTION			
	2/20	3/20		CONCUR 3/22 VOTE: 12-7		3/22
SB0297	DOHERTY, STEVE		MANDATORY INSURANCE VIOLATIONS PENALTIES			
	2/15	3/08		CONCUR 3/15 VOTE: 17-2		3/16
SB0316	BISHOP, AL		PROVIDE DUI SENTENCING ENHANCEMENT FOR DUI			
	2/20	3/14		CONCUR AS AMENDED 3/22 VOTE: 18-0		3/23
SB0333	BISHOP, AL		REVISE PROBATIONARY DRIVER'S LICENSE PROCEDURES UNDER DUI LAWS			
	2/20	3/14		CONCUR AS AMENDED 3/22 VOTE: 18-0		3/23
SB0340	CRIPPEN, BRUCE		AUTHORIZE LIMITED LIABILITY PARTNERSHIPS			
	2/22	3/06		CONCUR AS AMENDED 3/14 VOTE: 19-0		3/15
SB0353	HALLIGAN, MIKE		REVISE GUARDIAN AD LITEM IN FAMILY MATTERS/SPECIAL MASTERS IN CRIMINAL CASES			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 7, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 278, SB 66, SB 174, SB 353
Executive Action: NONE

Mr. Renz said they were using it.

REP. KOTTEL asked why there is still a perceived problem.

Mr. Renz said he could not answer the question.

{Tape: 2; Side: B; Approx. Counter: 27.8}

Closing by Sponsor:

SEN. LYNCH rebutted the arguments of the opponents. He said they were not talking about a three-strikes-felony bill or nonviolent offenders or the mentally ill. He said the most important thing is that a jury has to convict the offender a second time beyond a reasonable doubt. He reiterated that the issue was not protecting our children and grandchildren from the expense, but rather to protect them from the very few predators of society. He said he was amazed by the argument that they already have this in statute. He said that if that is the case, there would not be anymore costs. He did not think that age was a factor to the degree that the opponents proposed. He did believe that this proposed statute would be a deterrent. He suggested that child molesters should also be included in the bill.

HEARING ON SB 278

Opening Statement by Sponsor:

SEN. VIVIAN BROOKE, SD 33, said SB 278 would revise the laws relating to domestic violence.

Proponents' Testimony:

Judy Wang, Assistant Missoula City Attorney, Missoula Family Violence Council, summarized where SB 278 originated and why it was needed legislation. A committee drafted the bill and it was reviewed and amended by a district court judge, a justice of the peace and the Attorney General's office.

She said there were two logical divisions in the bill. The first addressed civil problems of victims of crimes, which involved restraining orders (TROs) (renamed orders of protection). She said that currently restraining orders are a subsection of Montana's marriage and divorce laws. She said that does not make sense since there are stalking victims and rape victims. The second division of the bill was the criminal changes in the laws impacting victims and abusers. They were asking that the crime called domestic abuse be renamed partner or family member assault and they were asking for minimum penalties so that assaults which occurred with the family would be treated like crimes.

She described nine problems under current Montana law which SB 278 would address and these are included in **EXHIBIT 8.** She referred to a letter from **Judge Douglas Harkin, EXHIBIT 9.**

{Tape: 2; Side: B; Approx. Counter: 51.0}

Janet Cahill, Violence Free Crisis Line, testified in favor of SB 278. **EXHIBIT 10**

Kathy Kendall, Board of Crime Control, urged support of SB 278.

REP. LIZ SMITH, HD 56, supported the bill.

Jim Humira, Missoula Police Department, supported SB 278.

Kelly Slatery-Robinson, Shelter Coordinator, YWCA Domestic Violence Assistance Center, pointed out the provisions of the bill which she supported. **EXHIBIT 11**

John Connor, Montana County Attorneys' Association, and on behalf of Beth Baker of the Department of Justice, said the association was asked to appear on behalf of this bill. He said that they were in support of strengthening the domestic violence laws. They had learned over the years from mistakes at the expense of victims that they need to respond more immediately and more sensitively and appropriately in domestic violence situations. Some amendments were proposed. **EXHIBIT 12**

Marty Bethel, Limited Jurisdiction Judge for Hamilton and Darby, highlighted the three changes which she felt were very important:

1. The name change from domestic abuse to partner or family member assault. The second violation of a cruelty to animals statute becomes a felony, where it takes a third offense against a wife or partner to become a felony offense.

2. Probation was a welcome aspect.

3. Mandatory jail time is a necessary change with a cooling off period being important to both the offender and to the victim.

She cited a North Carolina Supreme Court case of 1874 which said, "it is better to draw a curtain and shut out the public gaze and leave the parties to forgive and forget." She wanted to point out how familiar this sounds in regard to the current social responsiveness. She felt this bill was a move toward better intervention.

Mary presented written testimony. **EXHIBIT 13**

{Tape: 3; Side: A}

Carl Ibsen, Missoula County Deputy Sheriff, supported the bill and said it was a good bill without the amendments.

Sheriff Chuck O'Reilly, Lewis and Clark County, Montana Sheriffs' and Peace Officers' Association, said with the amendments they supported SB 278. Without the amendments, they felt the victim and responding officer were placed at a greater risk. The current language only would allow the officer to seize the weapon used in the assault. If the home contained several weapons and were not all seized, the means would be left for the offender to continue the initial assault. He and other police and peace officers felt the amendment would clarify the issue and prevent that from occurring.

Mark Muir, Montana Police Association, encouraged the support of SB 278. They recommended the bill be passed as enacted by the Senate.

Mary Alice Cook, Advocates for Montana's Children, said the statewide membership strongly supported the bill.

Holly Franz, Women's Law Section of the State Bar of Montana, strongly supported SB 278.

Jan Healy, RN, Billings Area Family Violence Task Force, presented written testimony. **EXHIBIT 14**

{Tape: 3; Side: A; Approx. Counter: 9.6}

Kate Cholewa, Montana Women's Lobby, urged support of SB 278. **EXHIBIT 15**

Sharon Hoff, Montana Catholic Conference, presented testimony in support of SB 278 with the amendments. **EXHIBIT 16**

Patrina Sims, Missoula County Family Violence Council, offered personal testimony to support the passage of SB 278. **EXHIBIT 17**

Jim Oberhofer, Montana Chiefs of Police Association, urged support of SB 278.

Diane Tripp, Missoula Family Violence Council, felt that SB 278 was a good bill because it addressed several issues which had become apparent since the last legislature. She mentioned that TROs do not travel from county to county or state to state but that this bill addressed that as a very important and helpful issue to victims.

Opponents' Testimony:

None

Informational Testimony:

The following are letters and documents in support of SB 278:

EXHIBIT 18, letter from Rocky Mountain Psychological and Addiction Services.

EXHIBIT 19 letter from **Klaus Sitte.**

EXHIBIT 29 letter from **Chief Deputy Charles Unmack, Dawson County Attorney.**
EXHIBIT 21 letter from **Sam Lemaich, Regional Supervisor, Probation and Parole Officer** with attached anonymous letter.

EXHIBIT 22 letter from **Pamela Anderson, Montana ACT Program.**

EXHIBIT 23 letter from **Missoula Indian Center.**

EXHIBIT 24 letter from **Karin Diane Sellman-Nesse.**

EXHIBIT 25 letter from **Theresa Troutman.**

EXHIBIT 26 letter from **Gail Hammer.**

EXHIBIT 27 letter from **Dodie Moquin, Domestic Violence Assistance Center, YWCA.**

EXHIBIT 28 letter from **Judy Williams, Lawyer, State Bar of Montana.**

EXHIBIT 29 document from **Majority Against Child Molestation (MACeM),** with written testimony from **Ms. Haskett.**

{Tape: 3; Side: A; Approx. Counter: 18.3}

Questions From Committee Members and Responses:

REP. MOLNAR said he was confused as to why somebody would petition for an order of protection but not want to press the charge.

Ms. Wang said it was very common when a family member or a partner is involved to not bring criminal charges because it makes it very public and though she did not have absolute numbers, the city of Missoula charged 189 offenders for domestic violence last year. The victim advocate helped approximately 400 victims with restraining orders. The overlap in those cases was that the victim sought civil remedies but did not wish to involve the criminal justice system.

REP. MOLNAR recalled that testimony indicated that restraining orders would no longer be mutual, but would be for the one charged. He said that some cases involved people who aggravated each other and asked why it would be wise to allow a restraining

order when the person would not press a charge and the other person was the only one restrained.

Ms. Wang replied that it was a civil remedy for having committed a crime and they were saying that anyone could get a TRO who fit within the parameters of being eligible, but if the person hadn't been the victim of a crime or hadn't been intimidated by a "loved one." She gave examples of reasons for not filing charges through the criminal justice system. If the other party had grounds for a restraining order, they could get one as well. She described current practice in which persons can get a restraining order without having to swear to anything or affirm that they had been the victim of a crime and how the bill provided for certain parameters to be met in order to obtain one. She said **Judge Harkin's** letter (**EXHIBIT**) summarized it best.

REP. MOLNAR discussed the application to sexual intercourse without consent whereby a person could say they had been raped and a restraining order issued based just on that person's word.

Ms. Wang said that there were civil and criminal penalties for false swearing and discussed the process of the hearing whereby someone can defend against it. She said the numbers of bogus restraining orders they saw was very small.

REP. SMITH asked about the procedure for the seizure of weapons as being the reason for the amendments.

Sheriff O'Reilly said they supported the amendments because they felt they made the bill stronger. He referred to his earlier testimony and pointed out in the bill where the provision stated they could seize the weapon used in the assault.

Closing by Sponsor:

SEN. BROOKE closed with the remarks that SB 278 would strengthen the laws that are now on the books. She said that HB 69 went hand-in-hand with SB 278 so that society could protect victims.

Motion: **REP. MC GEE MOVED TO ADJOURN.**

{Comments: This set of minutes is complete on three 60-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 3/7/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓ 8:1	~~✓~~	
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski			
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ 8:0	~~✓~~	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT 8
DATE 3/7/95
SB 278

To: Chairman Clark and Honorable Members of the House Judiciary Committee
From: Judy Wang Assistant City Attorney, Chair Missoula Family Violence Council
Re: Senate Bill 278
Dated: March 7, 1995

Introduction to Senate Bill 278

Senate Bill 278 proposes changes to two areas of Montana law that deal with violence and victims of violence. The first change removes TROs (Temporary Restraining Orders) from a subsection in the marriage and divorce statutes and places them in their own code section. The proposal renames TROs Orders of Protection. The new section revises Montana law to allow victims some protections that are currently not available. As an example, the proposal allows rape victims to get an Order of Protection.

The second change revises the criminal code concerning assaults within the family and between partners. We propose changes that cause these assaults to be taken more seriously, so that they are treated like similar crimes. The proposal calls for suggested minimum sentences for a first and second offense partner or family member assault that are similar to DUI sentences. We ask that local governments be allowed, but are not required, to establish probation offices to monitor offenders after conviction, to increase sentence compliance and reduce the rate of reoffending.

This bill was drafted by a committee of people including a prosecutor, a legislator, victim advocates, family law attorneys and children's advocates. A number of people who had input into the bill attended a National Conference on Family Violence Legislation and some of the proposals in the bill began as ideas from that Model Code. The proposal was reviewed and suggestions were implemented from a District Court Judge, County Attorneys, a Justice of the Peace, Health care workers, Victims of Family Violence, Victim Advocates and the Attorney Generals office.

Senate Bill 278 looks longer and more complicated than it really is. The proposal renames the crime currently called Domestic Abuse Partner or Family Member Assault and the renaming process called up many statutes that aren't otherwise impacted by the proposal. The real essence of the bill starts on page 10.

The easiest way to explain why the changes are needed in Montana now is to give examples of problems that have occurred under current Montana law. I will then explain how the proposal would prevent the problem from happening under the law as it will read if Senate Bill 278 is enacted.

Name Changes (Sections 10, 45-5-206 and Sections 21-29)

The current criminal statute that prohibits violence within the family is called "Domestic Abuse". Using everyday definitions for those terms the crime sounds like "Tame" (domestic) "misuse" (abuse). It hardly sounds like a crime at all!

The proposal renames that crime "Partner Assault" or "Family Member Assault". That makes the offense "sound like" a crime. As it is renamed the title refers to the criminal act (Assault) and the victim in the crime (Partner or Family Member). This is similar to other Montana Statutes (Assault, Mistreating Prisoners, Endangering the welfare of children).

Orders issued by a judge to protect a victim from further violence are currently called Temporary Restraining Orders (TROs). Sometimes other terms are used like Preliminary Injunction or Injunction or Restraining Order. The different titles we currently use have created confusion and don't make it clear what the real purpose of the statute is-to protect victims of crime. The proposal renames TROS Orders of Protection and Temporary Orders of Protection. This makes the purpose of these orders clear, to protect victims of crime from further violence.

Suggested Minimum Penalties (Section 10 45-5-206(3)(a) and Section 12)

Missoula County District Court Judge Douglas Harkin is a member of Missoula's Family Violence Council. He sees third offense felony Domestic Abusers (to be renamed Partner or Family Member Assaults). Many of the offenders that he sees for felony offenses have not spent any time in jail other than when they were arrested. Basically many of the offenders are charged with a felony before they even "get it" that what they have done is an crime.

The proposal calls for minimum sentences that are similar to first and second offense DUIs. The minimum sentences are proposed in strong language "an offender convicted of partner or family member assault shall be fined... and shall be imprisoned in the county jail not to exceed 1 year or not less than 24 hours...". The committee's intention was that those sentences are strongly suggested, but not necessarily absolute. We did not add language that stated that those sentences cannot be suspended. The intent is that the minimums could be suspended given appropriate circumstances. For example, an indigent defendant who could not pay the fine or an offender so ill that incarceration could endanger his or her health could have the minimums imposed, but suspended. The purpose of the minimums is to make it clear that, like DUIs, this is a crime and there are penalties that follow when you commit a crime.

TROs (to be renamed Orders of Protection) frequently are not taken seriously under Montana's current laws. In Missoula Municipal Court we frequently see offenders who have committed two, three, four sometimes even five TRO Violation offenses. Each and every one is a misdemeanor offense and often times offenders are only penalized with a small fine. Some times traffic offenses are taken more seriously than TRO Violations.

The proposal calls for a third offense Violation of an Order of Protection to be a felony. It also suggests a minimum sentence for a second offense TRO Violation (to be called a Violation of an Order of Protection).

Victims Who Still Need Protection (Section 10, 45-5-206 (2)(a) and Section 22)

There are still victims of crimes who need protection but are not eligible for a TRO under current Montana law. The proposal makes Victims of Rape, Incest and Sexual Assault eligible for an Order of Protection, regardless of their relationship to the offender. Inlaws who commit one of the listed crimes against a family member could be served with an Order of Protection. Senate Bill 278 includes people who have had a child with their abuser in the definition of "Partner" so that they are eligible for an Order of Protection, if they have been the victim of one of the listed crimes committed by their partner.

Counseling (Section 10, 45-5-206 (4)(a) and (b))

Montana law mandates 25 hours of counseling upon conviction for the offense of domestic abuse (to be renamed Partner or Family Member Assault). There is no assessment prior to counseling.

A few years back a Missoula offender in counseling disclosed in group that he had been a "Hit Man" for the Mafia prior to moving to Montana. He was in the same group with offenders who had been cited for their first offense. It doesn't make sense that we could or should put an experienced killer in with first time offenders. That is exactly what we did. We undoubtably do mix inappropriate people in the same counseling group when we do not assess offenders before we send them to counseling.

The proposal calls for an assessment of violence, dangerousness and chemical dependency prior to counseling. It only makes sense that we want to figure out what the offenders problems are before we try to fix them with counseling.

Notice of Rights to Victims (Section 15, 45-6-602 and Section 20)

Currently Victims are given some information about their rights and the services that are available at the time of an arrest. Some of the information that is given, under our current statutes, is misleading. No one other than peace officers is required to give a notice of rights to victims.

The proposal calls for a corrected notice of rights, both to reflect current law and the other proposed amendments. Health care workers, when they suspect that a partner or family member assault has occurred, under Senate Bill 278, may also give a similar notice of rights. The reason for including health care workers is that there are many many victims of family violence who seek health care for their injuries but who do not connect with anyone else in the system. We propose that health care workers also give a notice of rights so that we get the message out to victims about their rights and services that are available.

Organization of Montana Laws relating to Victims of Family Violence
(Sections 5, and Sections 21 through 29)

Currently TROs are located as a subsection of a Marriage and Divorce statute. That doesn't make sense when stalking victims and victims of sexual assaults also need Orders of Protection. Most people who get a divorce do not need an Order of Protection. Many of the

people who get an Order of Protection do not need a divorce and many are not married to the offender.

Our proposal moves Orders of Protection (formerly TROs) to a victims rights section. It simply makes sense that an Order of Protection is very different than a divorce.

Sentence Monitoring (Section 18)

We really don't have a way to make sure that offenders follow the sentences that are required of them under current law. We tell them to quit drinking, get counseling or stay away from the victim but we don't have a method of making sure that they do what we tell them to do.

The proposal gives local governments the authority to create misdemeanor probation officers who can monitor offenders. The probation officers can monitor DUI offenders and other misdemeanants as well. Senate Bill 278 allows local governments to set up these offices but did not make it mandatory that they do so.

Protections Available (Section 23)

There are a number of kinds of protections for victims available under current law. We continued the protections currently available and added some other protections.

The proposal gives judges the discretionary authority to order that an offender shall stay a certain number of feet away from a victim. That is important because some offenders, if ordered to just stay away without being told a foot restriction, will go where ever and when ever the victims is on public property and terrorize her or him. Having a foot restriction gives the victim a comfort zone and makes it clear to the victim or the offender where the boundaries are. The proposal gives a judge the option to order that an offender stay away from other named family members and order some additional property protections where and when it is appropriate.

Practical Problems (Sections 24 and 27)

Currently there is some question about whether TROs are enforceable throughout the state. There are still a number of courts that will order that a victim of a crime, who requests that he or she be protected by an TRO (to be renamed an Order of Protection) be restricted in her contact with the offender. An additional question is whether and when a TRO is moved to district court.

Senate Bill 278 resolves all of those questions. It states clearly that an Order of Protection is enforceable throughout the state. It states that the process to get an Order of Protection is the same for all persons. To get an order of Protection you must swear out a Petition that you are a victim of a crime. No one can get an Order of Protection by simply showing up at a hearing and asking that it goes both ways. We clarified when and if a

Petitioner should file an Order of Protection in District Court or a court of limited jurisdiction.

Brief Summary of Written testimony

Counselor Dee Lundberg
Attorney Klaus Sitte
District Court Judge Douglas Harkin
Dawson Deputy County Attorney Charles Unmack
Pam Anderson with Turning Point the DUI school in Missoula
Sam Lemaich Regional Supervisor Probation and Parole
Anonymous Victim a Survivor
Prevention Education Specialist Linda Hanson
Karin Nesse a Survivor
Thresa Troutman a Survivor
Gail Hammer an Attorney who has worked with battered women

On behalf of the Missoula Family Violence Council, the Missoula City Attorneys Office and personally as a Prosecutor with 8 years experience prosecuting Partner Family Violence cases I request you to vote for Senate Bill 278 as it was enacted by the Senate.

EXHIBIT 9
DATE 3/7/95
SB 278

STATE OF MONTANA
FOURTH JUDICIAL DISTRICT
SSOULA AND MINERAL COUNTIES
DEPARTMENT 4

COUNTY COURTHOUSE
200 WEST BROADWAY
MISSOULA, MT 59802-4292
(406) 523-4774

DOUGLAS G. HARKIN
JUDGE OF THE DISTRICT COURT

March 6, 1995

COPY

TO: Chairman Clark and
Members of the House Judiciary Committee

RE: House Bill No. 278

Please consider my comments on the following proposals contained in House Bill No. 278.

I suggest that the appropriate paragraphs of §40-4-121 be amended because this statute allows a justice, city, or municipal court to grant a permanent injunction upon a showing made in that court without the filing of a sworn affidavit. This presents three problems:

1. The resulting restraining order is subsequently presented in district court as a justification for district court action against the restrained party - but the district court has no factual basis for taking action because there is no record of why the justice, city, or municipal court granted the restraining order. "Just do it because the other court did it" is not a good reason for my court to issue a restraining order. I want facts.

2. The affidavit that was filed by the party requesting a restraining order is examined with a fine-toothed comb when the case arrives in district court, and slight exaggerations or misstatements are used to great advantage. The other party who obtaining a restraining order, without an affidavit, does not experience that grueling cross-examination.

3. It's too easy for the justice, city, or municipal court judge to just grant mutual restraining orders against each person and not do what judges are required to do - decide who is the real troublemaker and put a stop to it!

I support the proposal that §45-5-626 be amended so that only the restrained person would be cited for violation of the restraining order.

Sincerely,

Douglas G. Harkin
District Judge

EXHIBIT 10
DATE 3/7/95
SB 278

TESTIMONY OF JANET CAHILL, REPRESENTING MONTANA COALTION AGAINST DOMESTIC VIOLENCE

Respresentative Clark, members of the committee, my name is Janet Cahill from Violence Free Crisis Line, Kalispell, Montana and I represent the Montana Coalition Against Domestic Violence. The coalition is an organization of programs and individuals who provide services to battered women and their children - the victims of domestic violence.

In 1994 Montana domestic violence service programs report providing over 30,000 days of shelter to battered women and their children. More than 6,000 battered women were served through Montana's crisis lines and shelters. Montana Coalition Against Domestic Violence strongly supports and urges you to support SB 278 as it came from the Senate. Justice Department statistics report only 2295 cases of domestic violence. The increased protections for victims and consequences for offenders will encourage more battered women to seek the remedies that the criminal justic system and provide.

EXHIBIT 11
DATE 3/7/95
SB 278

YWCA

1130 West Broadway
Missoula, MT 59802
(406) 543-6691

March 7, 1995

Chairman Clark and members of the House Judiciary Committee, thank you for this opportunity to speak.

I am Kelly Slattery-Robinson, the Shelter Coordinator of the YWCA Domestic Violence Assistance Center in Missoula and have worked in the field of domestic violence for 6 years.

I will be very brief. There are many things that I like about this bill. I especially like the proposal of misdemeanor probation officers to monitor offenders. Holding offenders accountability for their behavior is a very important step in eradicating the problem of partner assault. I also like that the third offense of Orders of Protection violation will be a small felony, again holding offenders responsible for their behavior.

Thank you for you time and please vote for Senate Bill 278 as it was enacted by the Senate.

Thank You,

Kelly Slattery-Robinson

Kelly Slattery-Robinson, Shelter Coordinator
YWCA Domestic Violence Assistance Center

EXHIBIT 12
DATE 3/7/95
SB 278

SENATE BILL 278

Testimony of Elizabeth S. Baker
Assistant Chief Deputy Attorney General

Attorney General Mazurek and the Department of Justice strongly support Senate Bill 278. Montana's major crime rate has not fluctuated significantly over the past ten years. However, with the exception of 1993, the rate for domestic violence offenses has risen steadily since the offense was separately classified in 1988. Figures are not yet available for 1994.

In 1993, there were nearly 2300 reported cases of domestic abuse in Montana--one every three hours and 49 minutes. The statistics would no doubt be higher if all such offenses were reported but often they are not.

The United States Department of Justice 1994 report indicates that more than two thirds of violent attacks against women nationally were committed by someone the women knew.

Senate Bill 278 represents a significant effort to heighten public awareness about the fact that domestic abuse is not at all domestic; it is a crime of violence and must be treated seriously. The bill strengthens options available for the protection of victims. One of the most important features is separating the protective order provisions from the marital dissolution statutes. There has been confusion in the past about when someone is entitled to a restraining order. This bill will keep restraining order provisions in the family law code for appropriate cases but will also give independent protection to victims regardless of the status of their marital relationship

Many violent behaviors are learned at home. To prevent crime, we need to stop violence in the family. Senate Bill 278 is an important step toward that goal.

EXHIBIT 12
DATE 3/7/95
SB 278

Amendments to Senate Bill 278
Third Reading Copy (Blue)

Requested by Sen. Vivian Brooke
for the House Judiciary Committee

Prepared by
Beth Baker, Department of Justice

1. Title, line 10.
Following: "AUTHORIZING"
Strike: remainder of line 10 through "SITUATION" on line 11.
Insert: "POLICE OFFICERS TO TAKE REASONABLE ACTIONS FOR THE PROTECTION OF VICTIMS OF PARTNER OR FAMILY MEMBER ASSAULT"

2. Page 12, line 6.
Following: "offender"
Strike: "~~charged or~~"
Insert: "charged or"

3. Page 12, line 7.
Strike: "THE"
Insert: "a"
Strike: "USED IN THE ASSAULT"

4. Page 15, line 15.
Following: "(6)"
Strike: the remainder of line 15 and line 16 in its entirety.
Insert: "any other order of protection reasonably necessary to protect you or other family members"

5. Page 17, line 22.
Strike: "**seizure of weapon**"
Insert: "**peace officer response**"

6. Page 17, line 23.
Following: "assault"
Strike: remainder of line 23, all of line 24 and line 25 through "officer".

7. Page 18, line 1.
Strike: "(3)"
Insert: "(2)"

8. Page 18, lines 23 and 24.
Following: "(6)"
Strike: remainder of line 23 and line 24 in its entirety.
Insert: "any other order of protection reasonably necessary to protect you or other family members."

February 3, 1995

EXHIBIT 13
DATE 3/7/95
SB 278

Chairman Clark and Members of the House Judicial Committee:

My name is Mary. I am a Survivor of Domestic Abuse. I am most grateful for this opportunity to be with you and present testimony about an issue that has nearly destroyed us as a family, as individuals, as simple human beings trying to peacefully inhabit this earth. I am a Registered Nurse by profession. I am blessed with two wonderful children, now ages 4 and 7 who live with me, and are learning some very difficult lessons about life - far, far ahead of their time. I am a third from a family of 8 children, grew up with little money - but lots of other "fringe benefits" - for example - a warm home, 3 square meals per day, a solid education, a sense of being cared for, and lots of laughter. My Mother was the most trusted and consistant person I've ever known. From my Father, we learned an uncanny way to deal with life's little difficulties - we learned to laugh at our problems and with ourselves. Anger, exhibited either physically or verbally toward another person was not even an option. It just didn't happen. Conflicts, it seemed, were resolved quickly and easily. My Father was neither disrespectful nor punative towards my Mother. I learned patience and tolerance on all levels.

And never, NEVER did I EVER imagine that I would grow up to experience violence in my own home. Never did I ever expect my husband (a respected Health Care Professional) to violate me in the ways he ultimately did. Beyond all - never did I ever fathom that my sweet and innocent children would be subjected to the intense pain and grueling emotional struggles they have been forced to endure. The frustration of all frustrations? I was totally unable to stop it. To contain it. To soothe it. To heal or medicate or manipulate or obliterate it. It was a Monster who surfaced without invitation or provocation. On a good day, or a bad day - often a holiday. No predictable rhyme or reason. I learned to generically limit many social gatherings or get-togethers for fear of its release, for fear the Monster might jump out and "seize the moment." I loved the good nature of the man who "harbored" the "Monster", the Intimidator, the Ghoul of brut strength. He was a man I first met as the funny man - light of spirit, fun to be with, intelligent, adventuresome, a lust for life and all its fullness.

I wanted to travel and "experience life" with him. To do things / go places I'd never been. And all was well within this game plan - for it satisified his needs. But as time moved along, it was soon evident that his appetite for self indulgences was not only huge, but insatiable. And his willingness to "share" his "resources" (myself) with even his own blood (his first-born son) was intolerable. His temper flared, His anger soared. He acted up (verbally accousting me, throwing things all over the house, breaking special things of mine, smashing my glasses, tearing my clothes, kicking in walls and appliances, holding me down and choking me - to name a few) and he acted out (outside our marriage). And then came the day I almost lost my stomach - not to mention my mind. He killed our neighbor's dog - "hog-tied" - with his Marine Corps knife - and later beheaded several other animals who ceased to be at his hands. I told him to leave, I tried to leave - on several occasions - but somehow, when the acute stage was over - he became his sweet self once again - apologized, wept, begged for forgiveness and for "another chance". And vowed - vowed to "never again". And for a while, he wouldn't, he didn't. He would be great. He was believable. In fact, the craziness became the unbelievable. The past. Over. Forgotten.

But then, one day again, he would get mad. Yes, again. The hell waters would rise, and on and on...

And then one day, I drew a line. Told him not to cross it. I told him, "...if you ever again lay a hand on me in anger I will call the police." He responded, "I hope you would, because I could never live with myself knowing that I ever hurt you again."

And of course one sunny wonderful afternoon, he again got angry, he said some horrible things, he choked me. I left. I called the police. I obtained "protection" (a restraining order.) He came back. Angrier. He choked me - and this time, with his hands on my neck - thrust my whole body to the ground, struck my head on the sidewalk. I blacked out, came back (it scared him - he too must have thought I was dying) and begged him to leave me alone. He tried to keep me from going for help. My forehead was deeply abraded, freely bleeding outwardly and major swelling beneath the skin. Both eyes blackened and swelled, as did my nose. I had a concussion, and a severe headache for several days, of lesser intensity for 3 wks. For 2 days I barely moved from the couch - except for my bare necessities (and to care for my 6 mo. old baby.

My 3½ year old son took care of me - wiping blood from my head, holding ice to my wounds. A series of horrible events ensued for my son - from intense fear to nightmares, bed wetting, -acting out what he saw - choking his little sister and other little friends - I was devistated and horrified. My baby wept in her sleep, and later, unprovoked tantrums. My life became a living nightmare. My children and I feared going out our own front door - not knowing where he might be (and sometimes was) lurking. (stalking) He had bizarre phone calls day and night. I died emotionally. He terrorized us with his craziness. We were victims of his encampment even when he was not near. I developed asthma. I was financially consumed - nearly lost our home, car and all. The 3 of us slid into a black hole of numbness and depression.

Three and one half years later, myself and my children are getting on with our lives. I had started my oldest son and myself immediately into counciling which helped both of us to develop a healthy perspective about life despite the incredible void we had been trapped in. My son is doing well in school - both socially and academically, and he and his sister (for the most part) adore each other and are very protective of one another. We've learned that sometimes life just doesn't unfold the way one might plan or hope for. And somewhere in the back of my head resounds a sentiment from my 8th grade teacher - "... with every privledge comes responsibility..." I do truely feel lucky and privledged to be alive today. And I do feel a responsibility to speak out against all violence towards other living beings. I feel the we as a society must open our eyes and look at the pain and suffering around us - and know that it is all highly unnecessary, and can be resolved - if we can just allow it to happen. In the words of my 7 yr. old son - "If someone feels like he has to "do it" (act out violently) - why doesn't he just walk out the door instead - and not put the kids through watching it, and not put the Mom through it."

The answers truely are simple. We only complicate our lives by keeping our heads in the sand. We do have some very big problems with escalating interpersonal violence throughout the world. But we also each have a choice. To think, or not to think. To act, or not to act. To facilitate healing - or remain a stick in the mud. We have a choice about how to manage the problems at hand in our communities. We are fortunate to have experts who have made excellent recommendations on how to support the offended + effectively deal with the offenders. Don't miss the opportunity to

make life just a little bit easier for someone who desperately needs it. Someone you know is suffering from the effects of Domestic Violence right now - though you may not yet be aware of it.

Think.
Act.
Vote for Senate Bill 278 as enacted by the Senate.
Then, sleep well tonight.

EXHIBIT 17
DATE 3/7/95
SB 278

03-07-95

Senate Bill 278

Chairman Clark, members of the House Judiciary Committee, I am grateful for this opportunity to testify here today. My name is Patrina Sims and I was a victim of spousal abuse for 6 1/2 years.

My husband started beating me within a month of our marriage. At first the beatings occurred behind closed doors then progressed in front of my children as they sat cringing on the sofa or in the corners of the room. Protecting my children from harm as his fists reined down on me didn't exactly keep my bruises or swelling hidden when I went to my doctor's regular appontment. He took one look at me and asked, "Who's been hitting you?". Embarassed, I denied his accusation but later felt humiliated when the x-rays confirmed a cracked clavicle. He gave me phone numbers of a battered womens' shelter and the name of a support group. I proceeded to switch doctors.

The last beating occurred after an argument over my oldest son's misbehavior at school. My husband threatened to beat Tyler severely. I fled Fortine, Montana with bruises and swelling body parts to remind me that I was doing the best thing for my children. Previous attempts to flee in my car proved hopeless. He would pull plugs and wires, grab the children, or take the keys away.

03-07-95

Through the concerted efforts of several crisis lines, I was able to seek shelter at the Domestic Violence Assistance Center in Missoula. By the time I found a home for my children and I, custody visitations were granted. This allowed my husband to continue with his menacing threats, breaking of my personal property and harassing my children and I, both in our home and at their school. After my husband physically restrained me from dialing 911, I obtained an Order of Protection. When police officers again responded, I was impressed. They took necessary action to assure my children and I remained safe.

My ex-husband's incarceration in Deer Lodge gives me TEMPORARY RELIEF, but once he's out, I would feel safer if his movements were monitored and I could obtain an Order of Protection for my children and I despite the time elapsed since his last offense.

By voting YES, on Senate Bill 278, I truly believe it will make it LESS LETHAL for all victims. Please vote YES on Senate Bill 278.

Thank you for allowing me to be heard.

Sincerely,

Patrina Sims

Missoula, Montana 59801

EXHIBIT 18
DATE 3/7/95
SB 278

ROCKY MOUNTAIN PSYCHOLOGICAL & ADDICTION SERVICES

210 N. Higgins Avenue, Suite 202 Missoula, MT 59802 (406) 721-0909 fax (406) 721-7071

March 6, 1995

To: Chairman Clark
RE: Senate Bill 278

Dear Chairman:

I am writing in support of SB278, specifically to address the need for a counseling assessment prior to counseling for Domestic Abuse. As a practitioner providing batterers' treatment, it has been my experience that the current 25 hours is, in many cases, not sufficient to lower the risk of re-offending. In addition, the absence of counseling to address other complicating factors, such as chemical dependency, leaves the abuser at a significantly higher level of risk for repeat offense.

National statistics show 70-80% of domestic abuse cases have substance abuse involved in the incident. As a Montana State Certified Chemical Dependency Counselor, it is likely I have had a greater awareness than many batterers' counselors of the frequency of substance abuse issues among my battering clients. My experience over the past eight years supports national statistics. Furthermore, it has been my experience that the skills taught in domestic abuse courses are essentially useless if the client has a substance abuse problem. It is difficult to incorporate skills that call for some sense of judgment and reason when an individual is intoxicated.

Aside from the issue of chemical dependency, there are several cases of domestic abuse in which the standard 25 hours of counseling, now allowed by law, is insufficient. For some of these men and women, 25 hours may only begin to break the denial. Many of these individuals' patterns of abuse are so long-standing and so ingrained that to expect major change in this amount of time is totally unreasonable and unfair to the client.

In closing, I urge you to seriously consider amending the current domestic violence laws to support counseling assessments up front and enforcement of any recommendations made by the counselor. I do not see this as punishment. As a counselor, my interest in this matter is providing the best possible opportunity for positive change with domestic abuse clients. My experience suggests that many of these people do want to change, yet it almost always takes legal intervention to start the ball rolling. The current laws are just not enough!

Thank you for your careful consideration of this matter.

Respectfully,

DeEtte A. Lundberg, B.S., C.C.D.C.

EXHIBIT 22
DATE 3/7/95
SB 278

WESTERN MONTANA
MENTAL HEALTH CENTER
TURNING POINT

500 North Higgins, Suite 101
Missoula, MT 59802 (406) 543-8623

February 2, 1995

TO: Senator Bruce Crippen, Chair
Senate Judiciary Committee

FROM: Pamela B. Anderson, Supervisor, Montana ACT Program

This is being submitted in support of SB 278, An Act Revising The Domestic Violence Laws, particularly as it relates to allowing local governments to establish a misdemeanor probation office.

Over the last fifteen years, I have been involved with the Montana ACT Program, the assessment and education program mandated for DUI offenders. As a consequence, I have worked closely with the lower court systems and have a gre deal of respect for their power and effectiveness in terms of intervention and deterrence. The lower courts tend to be more of a "people's court" where defendants often represent themselves and disclose information to the judges that they might not do in a more formal setting, or in the presence of an attorney. This then allows a judge to fashion sentencing conditions that deliver the necessary punishment, and offer rehabilitation. It is not uncommo in Missoula for a judge to sentence a DUI offender to the maximum jail term an then suspend part of the sentence provided that certain conditions are met. These conditions are typically designed to intervene in a pattern of substance abuse and they are often applied in domestic violence convictions as well give the high incidence of alcohol or other drug involvement in those cases. If the conditions are violated, the Court may then revoke the suspended sentence and the defendant may serve the maximum jail term. For many, the fear of further jail time is an essential motivating factor in bringing about the necessary change and in deterring them from engaging in behavior that could lead to further illegal activities.

Unfortunately, the diligence of the court systems in applying these strategies is hampered by there being no mechanism in place to monitor compliance with the sentencing order. SB 278 specifically addresses that deficiency. Given the high correlation between substance abuse and domestic violence, a program to monitor compliance with sentencing conditions for family violence offenders would target both populations. We, in the chemical dependency treatment field believe that change will occur when the cost of use outweighs the perceived benefit. Adverse consequences consistently applied by the legal system often tip the scales in favor of providing the motivation to engage a recovery process.

Finally, I suspect it would be the rare felon who did not leave behind a trail of misdemeanors. Swift and certain punishment at the misdemeanor level, combined with stringent sentencing conditions and close monitoring could serve to intervene in that progression. In terms of the financial cost to society an the human cost to victims, early intervention efforts would seem to be worthy serious consideration.

Thank you.

EXHIBIT 19
DATE 3/7/95
SB 278

WRITTEN TESTIMONY SUBMITTED IN SUPPORT OF SB 278

My name is Klaus Sitte. I serve on the Missoula Domestic Violence Council Legislative Subcommittee. I am an attorney for the Montana Legal Services Association, an organization which helps low income Montanans with civil legal problems. I have represented abuse victims for more than 20 years. For the past 15 years, the demand for our services has increased so dramatically that we have restricted our family law caseload to domestic violence cases only. MLSA continues to provide those services to family violence victims.

As you know, however, family violence, is cross racial, cross cultural and cross economic. The families we serve and protect represent only a small portion of those who need protection. I am here to offer support for SB 278, as passed by the Montana Senate.

This revision of Montana's Temporary Retraining Order laws is needed and necessary. In addition to consolidating, simplifying, clarifying and modernizes the code, SB 278 makes it clear that neither marriage **nor relationships** provide a haven for abuse.

WRITTEN TESTIMONY SUBMITTED IN SUPPORT OF SB 278

Family violence cases are among the most difficult matters facing the courts and the judicial system. Surely, we all know the risk faced by law enforcement officials when encountering any form of partner assault. Peace officers should have every conceivable protection in their arsenal of options, for themselves, the victim and innocent bystanders, usually the children. SB 278, as passed by the Senate, provides additional remedies for the protection and safety of all concerned.

The counseling assessment provisions buttress the present counseling requirements. These elements together recognize that Montana considers partner or family member assault a **serious** offense. These revisions go a long way toward dispelling the myths that victims seek out abuse or that we can tolerate **some** violence, as long as it stays in the family.

All too often clients I have represented continue to face repeated assault because options are unnecessarily limited. Continued and repeated harassment, "drive-bys," threats to remove the children from Montana and threats with weapons are addressed by SB 278.

And, because there always exists the opportunity to abuse the **process**, the alleged abuser has options too, such as requesting emergency review of temporary orders of protection.

Victims, children and law enforcement need this bill. Those of us working in family law and the area of domestic violence sometimes wonder what it is we are doing. What does it all mean? Are we helping? It is all too infrequent that what we do **can** make a difference. It is even more rare that what we do can actually save lives. SB 278 has that potential. I strongly urge you support of SB 278, as passed by the Senate.

Respectfully submitted this 7th day of March, 1995.

Klaus D. Sitte
Montana Legal Services Assn.
304 North Higgins
Missoula, MT 59802

EXHIBIT 20
DATE 3/1/95
SB 278

– DAWSON COUNTY ATTORNEY –
215 SO. KENDRICK • P.O. BOX 1307
GLENDIVE, MONTANA 59330
(406) 365-2532

February 1, 1995

Senate Judiciary Committee
Bruce Crippen, Chair
Capitol Station
Helena, MT 59620

Re: Domestic Violence Legislation

Dear Senators:

I hoped I could be present for your hearing on the Domestic Violence legislation on Friday, February 3, 1995, but my schedule does not permit me to make the trip. I hope you will accept my written comments for your discussion of the bill.

I am a Deputy Dawson County Attorney and I am frequently required to apply the domestic abuse laws. Domestic abuse is a serious problem in our community. It devastates our families. It humiliates the victim and overwhelms the children. Domestic violence often places the abused spouse into our welfare system. The children often become involved in the youth judicial system, either as youths in need of care or as juvenile delinquents. The social cost of domestic violence is enormous.

From my experience, many instances of domestic violence occur in families with a history of violence. It is natural for people to act in the manner in which they observed their parents act. I have also witnessed women get away from an abusive man only to fall

CHARLES FREDERICK UNMACK
Chief Deputy

GERALD J. NAVRATIL
County Attorney

SCOTT HERRING
Deputy

in with another abusive man. I do not know why. But I do know that intervention and education are keys to the problem.

I am asking your support for this legislation for the following reasons:

1. The bill refines the process of obtaining a restraining order. Currently, restraining orders may be obtained in the statutory section dealing with divorce. But the crime of domestic violence occurs in many more situations than just divorce. This bill creates a new section for orders of protection. That section should be more readily understood by distraught, abused spouses.

2. The bill increases the minimum penalties for committing the crimes of Domestic Abuse and Violation of a Protection Order. Presently, a violation of a Protective Order is a misdemeanor for any number of offenses. The bill will make a third offense a felony. I strongly support increased penalties for repeat offenders.

3. The bill provides a more detailed educational course for an offender and gives prosecutors more latitude in requiring additional hours of counseling for offenders. If we are to break the cycle, we must do it through education.

4. The bill expands the categories of persons eligible for an order of protection. Presently, the protection of victims falls on county attorney offices. Sadly, we often do not accomplish enough on behalf of victims. This bill will allow victims to be more active on their own behalf.

I hope you will give your support and your vote to this legislation. It represents a strong and informed step toward crime.

Sincerely,

Charles Frederick Unmack

Charles Frederick Unmack

EXHIBIT 21
DATE 3/7/95
SB 278

DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

STAN STEPHENS, GOVERNOR

1539 11TH AVENUE

STATE OF MONTANA

(406) 444-3930 FAX (406) 444-4920

HELENA, MONTANA 59620-1301

January 26, 1995

Judy Wang
Missoula City Attorney Office
Missoula Family Violence Council Chair
Missoula City Hall
435 Ryman
Missoula, MT 59802

Dear Ms. Wang,

Thank you for sending me a copy of the proposed legislation regarding family violence and DUI offenders and establishing of local misdemeanor probation officers to supervise these offenders.

I support the proposed legislation and view as very positive the plan to have these serious misdemeanor offenders supervised by probation officers. In both the cases of family violence and repeat DUI offenses, the offenders often pose a serious threat to community safety. This is even more true when they fail to get required counseling or follow court imposed conditions of release. I view monitoring for compliance an essential part of any effective probation in these cases.

As Regional Supervisor for State Adult Probation and Parole, I see as a side benefit to this misdemeanor supervision, the potential to divert offenders prior to their being further immersed into the Criminal Justice System and possibly the State Prison. Many of the offenders we see first came to the attention of the Criminal Justice System via a DUI or family violence issues.

Thanks again for sharing with me this proposed legislation and feel free to use this letter as support for your proposal.

Sincerely,

SAM LEMAICH, Regional Supervisor
Probation & Parole Officer
127 E. Main, Suite 303
Missoula, MT 59802
(406) 549-0022

RECEIVED
1-27-95

February 1, 1995

To Members of the Montana State Senate:

I am writing in support of SB-278. I am presenting my testimony anonymously, and in writing, to prevent reprisals from my former husband. My former husband is a well-known business and political figure in our community. He is also well-known to the members of the legislature as a lobbyist.

I believe there is a perception among many that domestic violence only occurs in households at the lower end of the socio-economic scale. My husband always wore a suit and tie. He was pleasant and well-spoken. He appeared to be very attentive and concerned while we were in the presence of the medical care providers. In actuality, his concern was based on a need to be sure that I would not disclose the real cause of my injuries.

My marriage to this man was marred by domestic violence. I suffered injuries which ranged from bruises to sprains to cracked ribs. To conceal the cause of my injuries, my husband did not take me to the same medical provider twice in succession. Although I received medical treatment numerous times, no medical provider ever discovered the true cause of my injuries. This was due, in part, to the fact that my husband never left my side at any time during the medical examinations. In each emergency room, at each doctor's office, my husband gave a detailed account of how my injury occurred. Of course, the explanation was always untrue but, because I was never left alone with the medical staff, I never had the opportunity to give an accurate account of the cause of my injuries. On at least two occasions, when the medical care providers suspected I might have broken bones, my husband insisted on accompanying me while x-rays were taken. I never had the opportunity to describe what had actually happened to me. If the medical care providers ever suspected that my injuries were not consistent with the explanations given by my husband, they never had the opportunity to question me outside the presence of my husband.

At the time, I was unaware of any options available to me to remove myself from this situation. I had a small child and no independent income. I had no family in town nor in this state. My circle of friends were primarily persons who were associated with my husband and his business. My husband repeatedly warned me not to disclose what had occurred, convincing me that no one would believe me. I was convinced that I had no options.

I believe that the provisions of this Bill, which would require medical care providers to speak to a person suspected to be a victim of family violence outside the presence of the suspected perpetrator, might have given me the information I needed to extricate myself from this relationship. I believe that many times the explanation of my injuries were not consistent with the

injuries themselves. However, no one had the opportunity to question me about my injuries nor did any one have the opportunity to inform me of my rights as a victim of family violence. My ordeal might have ended months, maybe even years, earlier if this Bill had been in effect.

Since my divorce I have worked with other victims of family violence. In my experience with other victims, many feel as I did. They don't know where they will go or what they will do. They are unaware of any options that may be available to them and they are unaware of any rights they, as victims, might have. The provisions of SB-278 would give vital information to victims, through law enforcement and through medical providers. I strongly urge you to pass this bill.

DOMESTIC VIOLENCE - HAS ANY THING CHANGED IN TWENTY YEARS?

EXHIBIT 14
DATE 3/7/95
SB 228

By Jan Healy, R.N., B.S.N., C.E.N.

Has anything changed in twenty years in the way society views domestic violence? How about the judiciary and law enforcement, has their attitude changed? The health care providers, the mental health workers, the social service agencies, the clergy, has their attitude changed? When you see today's news headlines, it makes you wonder at the number of women who have "fallen through the cracks" of the system that is supposed to protect and help them, and as a result have been brutally assaulted and murdered. Why does abuse have to reach the sensational headline status before attention is paid ever so briefly to the victims of the abuse and their rights?

Emotional abuse starts long before the physical assault. Emotional abuse is the cruelest and longest lasting of all the forms of abuse. Emotional abuse scars the heart and damages the soul according to Andrew Vachss, noted author and attorney. Like cancer emotional abuse does its most dangerous work internally. Yet little attention is paid until the physical assaults cause serious physical injury to the victim, the batterer or both. Why does society not respond sooner to avert tragedy? The following story is a prime example.

The other day I visited with my former attorney who is now a judge. We chatted about my children, where they are and how they are doing. Then we talked of the events leading up to and that occurred after the court proceedings I was requesting information on. Toward the end of our visit the judge made the comment that perhaps if he had been a little more adversarial in my behalf, that tragedy could have been averted twenty years ago. But this story could have happened yesterday.

It was on March 23, 1974, Saturday afternoon at 12:20, that my husband of six years broke down the locked front door of my home and in front of our two small children, ages five and nine years, shot me seven times and then killed himself. It was the culmination of many threats and acts of violence that escalated into that final act. There were many beatings over trivial things, bouquets of red roses, apologies and promises that it would never happen again, if only I were thinner, a better wife, mother, housekeeper. His rationalizations went on and on. First came the emotional abuse with continual put-downs and attempts to completely control me. My husband was a manipulator par excellence. He manipulated me and my belief in the sanctity of marriage and a traditional family life. But no matter what I did, it was not right, nor was it enough. I sought help and counsel from my church leaders where I was affectionately patted on the hand and told to, "Try a little harder dear, be more submissive and your marriage will work." I am sure they were thinking love can conquer all. But this re-enforced my husband's blaming me for his battering and increased my feelings of failure and responsibility for the abuse. My self esteem was so low, I felt I had no rights as a wife, mother or person. It reached the point that even though I was employed full time, my husband would give me $75 to buy groceries. Then after purchasing the groceries, I would give my husband the change. He then would check off the items on the grocery receipt as I put them away. He felt all money in the household was his and he controlled it as he saw fit.

When the physical abuse started, I learned to wear long sleeved blouses and dark hose or pants to cover the bruises on my arms and legs. I did not want anyone to know. I did not tell anyone because I was so ashamed. This kind of

thing did not happen to anyone I knew. There must be something wrong with me. I lived isolated in constant fear. But my friends at work knew and protected me from being questioned too closely by others about my black eyes. Finally one night after drinking he came home, raped me, beat me and then threw me out of the house in my pajamas. It was the end. I could take no more. I told my husband either he get help or I would leave and take the children with me. He then committed himself voluntarily to Warm Springs State Hospital for treatment for ninety days. Toward the end of that ninety day period, the psychiatrist from Warms Springs called me one evening at work. He informed me my husband had told him that if he was released from Warm Springs, he would come back to Billings and kill my children and me. The psychiatrist said he was obligated by law to warn me, but that was all he could do. Because my husband was there on a voluntary commitment they could not hold him once the ninety days were up. I will never forget the cold terror that gripped me at that moment and from then on became my constant companion. I felt totally helpless and exposed. No one could or would protect me or my children from this man. The nightmare intensified.

My husband was released from Warm Springs and instructed to stay away from my children, my home and me. He also was to report to the local Mental Health Center for further follow up counseling and drug therapy.

Needless to say, he did not comply with his treatment reqime. Within a day of returning to Billings, he was back at my home harassing me. I never knew from one moment to the next when he was going to show up threatening me with guns and knives at all hours of the day and night. I was held at gun point on several occasions. Then when all the guns were taken by the sheriff's deputies, I was held at knife point while my husband threatened to kill himself if I did not let him move back in the house with me. He was there so often the sheriff deputies and I had a signal worked out. They would just "stop by" to see how things were if they saw a certain light turned on (it was a light I never turned on otherwise). I refused to let my husband move back in. Strangely enough, I remained calm. Each time he showed up I called the police and tried to file a complaint. However, some of the times when I would go to the sheriff's office to file a follow up complaint, I would be told there was no report filed by the officers so I could not file a complaint. Nothing worked to keep him away. I obtained a restraining order to "legally" keep him from harassing me. Still he came back!

Finally in desperation, I went against my religious beliefs and filed for divorce. I would not have had the courage had it not been for a counselor at the Mental Health Center. He had called and suggested I come in for some supportive counseling. When I went in to see him, he validated my feelings that I was being beaten unjustly -- that no one has the right to beat anyone!

At this time, December 1973, I was working full time and taking pre-nursing courses at a local college. I had been accepted into the School of Nursing of Montana State University, and was scheduled to start classes winter quarter, January, 1974. This meant my children and I would have to move 144 miles away to Bozeman. I thought that at least here we would be safe. Besides, there was to be absolutely no contact with my husband except through my attorney. He was not even to know what town we were in.

My husband had been in and out of jail and the psychiatric unit at Deaconess Medical Center many times. Yet, after each release he came back to harass and

beat me day or night. I lived with constant mortal fear every moment of every hour of every day. So, on the advice of his psychiatric social worker and because of my husband's persistent non compliance with his treatment regime and I had found him hiding in the crawl space under my house with a loaded 357 magnum pistol, I started commitment proceedings.

At his trial he was represented by an attorney who was more concerned with protecting my husband's civil rights than his mental health. An attorney who had no concern for the safety of my children or me. My husband was interviewed for an hour by a psychiatrist who did not know his case at all because the psychiatrist in charge of my husband's case was out of town at the time. My husband was a highly intelligent professional person who knew how to play the game and work the system. He used to laugh about how he could fool them. And he did it this time too. The court turned him loose January 3, 1974.

Within a month, on a Saturday afternoon, when my children and I returned to our apartment in the married student housing at M.S.U. after a day of skiing, he was on our doorstep. That was the only time the terror got the best of me. I had thought we were safe. I had tried so hard to follow the advice given to me by the police, the psychiatric social worker and my attorney. Yet not even the law or hiding could keep him away from us. I managed to get the children inside the apartment and lock the door. Thank God it was a metal door so his pounding did no harm. I was hysterical and crying when I called the police for help. They told me I did not have a restraining order in Gallatin County so there was nothing they could do. I pleaded with them to call the Yellowstone County Sheriff's Department and my attorney. I then called some friends from church. The police came. My husband left. My friends arrived and took my children and me home with them for the night. I could not stop crying. After that I neither saw nor heard from my husband until the time of the shooting over a month later.

Winter quarter at M.S.U. ended. I was so proud and happy I had received my M.S.U. nursing cap signifying I was ready to start my clinical training. That was a Friday. That night my children and I returned to our home in Billings about 10:30 unannounced. The next morning I had a neighbor girl come and babysit my children while I met with my attorney concerning the divorce proceedings that were to take place the following week. I had just returned home from the meeting when my husband knocked down the locked front door of my home. His eyes were blood shot and there was the smell of beer on his breath. I looked in his eyes. I knew this time was different -- he was going to kill us! My son screamed, "He has a gun! He has a gun!" I shoved my son out the hole in wall that had been the door. The babysitter took my daughter out the family room door. As I turned back around to face my husband, he shot me three times point blank in the abdomen, then once in each side of the chest. By this time I too was out the front door. I fell off the front steps and he shot me again once in each hip. Mike then killed himself with one shot to the head. I was so confused. His last words to me as he stood over me shooting me were, "I am going to fix you so no one will ever think you are beautiful or love you again." I did not understand. He was the one that ran aound and had the extra-marital affairs. I was the one who was forgiving and stayed home taking care of the children and the home.

Although I lived when the doctors said I would not, went skiing six months after the doctors said I would not walk because my right let was paralyzed by femoral nerve palsy due to a partially severed femoral nerve, graduated from

M.S.U. with a Bachelor of Science in Nursing on June 10, 1977, and have worked as a registered nurse for the past seventeen years, I still have problems with my self esteem and have a difficult time trusting people. I still have my strong religious beliefs and have raised two outstanding children by myself. My son, Jim, is married to a wonderful young woman and is the father of the world's cutest three year old boy and eight month old baby girl. Jim is currently on a full ride scholarship to Stanford University Medical School and is in his third year of their M.D./Ph.D. program. Michelle, my daughter, is a senior at Brigham Young University majoring in psychology. This summer she married a sweet kind young man. Both children served outstanding missions for our church, Jim in Denmark, Michelle in South Korea. Despite the success in raising my children and my nurisng career, I could never quite understand all that went on during those traumatic years. I felt I must be deeply flawed that this had happened to me. There must have been something more I could have done. I must have failed.

The understanding that I was not flawed, that I did not fail, did not start for sixteen years. Not until May 1990 when I attended the first McGuire Memorial Conference on Family Violence. As I sat there listening to the lectures, it was as though a knot deep within my soul was untied and I began to understand at last. There was noting I could do to control my husband's behavior or prevent his battering. He was the one responsible for his actions. I was so relieved tears ran down my cheeks as I sat there among my colleagues from the emergency department.

Now I am committed to the education of the public - both lay and professional - in the hopes that other women will not have to live with the terror and confusion that were a part of my life for so many years. For this reason I share my story. Frequently I am asked if I have any anger about what I have been through. I would not call it anger -- it is rage. A rage that has been channeled into productive means. No one will ever hurt me or my children that way again! No one should have to go through what we went through! My children and I had fallen through the cracks of the system. Unfortunately today there are still thousands of stories similar to mine. So I ask, "Has anything changed in twenty years? Why are nearly 4,000 women being murdered each year by their spouses, former spouses, boyfriends or ex-boyfriends?" According to the National Coalition Against Domestic Abuse 4,000,000 women each year are battered so severely they require police or medical assistance.

Somethings have changed in twenty years. Most states have laws making domestic abuse a misdemeanor. Law enforcement goes on the domestic abuse call and makes the arrest. Unfortunately it is to the same residence, involving the same people again and again, frustrating the officers, prosecutors and judges involved.

The key to making substantial changes in community attitude about domestic is EDUCATION. Educating everyone from the judiciary, to the prosecutor, to the law officer, to the health care professionals, to the clergy, to the layman on the street. Orders of Protection must be stringently enforced. Sentences once the batterer is convicted must be stringently enforced. Victims must be informed of their rights by health care professionals as well as law officers. WE MUST DO EVERYTHING IN OUR POWER TO KEEP THE VICTIMS OF DOMESTIC VIOLENCE SAFE!!! We must assist them in accessing social service agencies, child care and legal assistance. WE MUST HAVE EARLIER INTERVENTION!!

EXHIBIT 15
DATE 3/7/95
SB 278

MONTANA WOMEN'S LOBBY

P.O. BOX 1099 HELENA, MT 59624 406·449·7917

To: House Judiciary Committee
Re: Support of SB 278

The Montana Women's Lobby urges your support of SB 278. SB 278 includes several proposals that will allow the state of Montana to better respond to the problem of partner and family member assault. In renaming the offense previously called domestic abuse to partner and family member assault, we acknowledge the nature of the offense that effects three to four million American women per year. The violence done in domestic abuse cases is an assault on an individual whose suffering is not alleviated, nor whose battering is made less horrifying, by the fact that the offender was a household member. Domestic violence, according to data put out by the National Association for Female Executives, is often treated with a slap-on-the-wrist. The same violence that would be called assault when committed against a stranger, is somehow diminished, perceived as a lesser crime, when done unto a spouse or family member and called domestic abuse. We believe the renaming better describes the crime and thus, better instructs the public and police as to its violent, unacceptable nature and how we need to deal with it.

We also support, in particular, in section 24, bringing the end to mutual restraining orders made for the convenience's sake. Those who are not a threat should not be treated as one. It is wrong to blame the victim, to criminalize the victim, for purposes of simplification.

We urge your support SB 278.

Facts:

A third of female emergency room patients are battered women.

A third of all homeless women in the U.S. are fleeing domestic violence.

Thirty percent of female homicide victims are killed by their male partners.
(National Association for Female Executives)

EXHIBIT 16
DATE 3/7/95
SB 278

Montana Catholic Conference

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, FOR THE RECORD, I AM SHARON HOFF, REPRESENTING THE MONTANA CATHOLIC CONFERENCE. I ACT AS LIAISON FOR MONTANA'S TWO ROMAN CATHOLIC BISHOPS ON MATTERS OF PUBLIC POLICY. THE MCC SUPPORTS SB 278. STRENGTHENING MONTANA'S DOMESTIC VIOLENCE LAWS IS THE RIGHT THING TO DO.

AN ESTIMATED 3 TO 4 MILLION WOMEN IN THE U.S. ARE BATTERED EACH YEAR BY THEIR HUSBANDS OR PARTNERS.[1] APPROXIMATELY 37 PERCENT OF OBSTETRIC PATIENTS--OF EVERY RACE, CLASS, AND EDUCATIONAL BACKGROUND--REPORT BEING PHYSICALLY ABUSED WHILE PREGNANT.[2] MORE THAN 50 PERCENT OF THE WOMEN MURDERED IN THE UNITED STATES ARE KILLED BY THEIR PARTNER OR EX-PARTNER.[3]

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[1] Council on Scientific Affairs, American Medical Association, "Violence against Women," Journal of the American Medical Association, June 17, 1992, 3184-3189.
[2] Ibid
[3] Ibid

DOMESTIC VIOLENCE COUNSELORS TEACH THAT VIOLENCE IS LEARNED BEHAVIOR. IN MANY CASES, MEN WHO BECOME ABUSIVE AND THE WOMEN WHO ARE ABUSED GREW UP IN HOMES WHERE VIOLENCE OCCURED. IN SUCH A SITUATION, A CHILD CAN GROW UP BELIEVING THAT VIOLENCE IS ACCEPTABLE BEHAVIOR; BOYS LEARN THAT THIS IS A WAY TO BE POWERFUL. ABUSE COUNSELORS SAY THAT A CHILD RAISED IN A HOME WITH PHYSICAL ABUSE IS A THOUSAND TIMES MORE LIKELY TO USE VIOLENCE IN HIS OWN FAMILY.

MEN WHO ABUSE WOMEN CONVINCE THEMSELVES THAT THEY HAVE A RIGHT TO DO SO. THEY MAY BELIEVE THAT VIOLENCE IS A WAY TO DISSAPATE TENSION AND TO SOLVE PROBLEMS--A VIEW THAT SOCIETY OFTEN SUPPORTS. BATTERING AND OTHER FORMS OF ABUSE OCCUR IN A SOCIETY SATURATED WITH VIOLENCE, WHERE VIOLENCE IS GLORIFIED IN BOOKS, IN MOVIES, AND ON TELEVISION. OFTEN, VIOLENCE IS PORTRAYED AS AN APPROPRIATE WAY FOR PEOPLE TO RESPOND TO THREATENING SITUATIONS.

NO ANSWER FULLY EXPLAINS WHY WOMEN STAY WITH THEIR ABUSERS. PSYCHIATRISTS REPORT THAT ABUSIVE RELATIONSHIPS USUALLY START OUT LIKE OTHER RELATIONSHIPS; INITIALLY, THEY ARE LOVING AND REWARDING TO BOTH PARTIES. WHEN THE FIRST VIOLENT ACT OCCURS, THE WOMAN IS LIKELY TO BE INCREDULOUS AND WILLING TO BELIEVE HER SPOUSE WHEN HE APOLOGIZES AND PROMISES THAT HE WILL NEVER REPEAT THE ABUSE. AS THE ABUSE IS REPEATED, MANY WOMEN COME TO BELIEVE THAT THEY SOMEHOW ARE TO BLAME FOR THEIR HUSBAND'S OR PARTNER'S ACTIONS: THAT IF THEY JUST ACTED DIFFERENTLY, THE ABUSE WOULD NOT OCCUR. IN TIME, AS THEIR SELF-ESTEEM PLUMMETS, THEY FEEL TRAPPED IN THE ABUSIVE RELATIONSHIP, ESPECIALLY IF THEY HAVE CHILDREN AND NO OTHER MEANS OF SUPPORT.

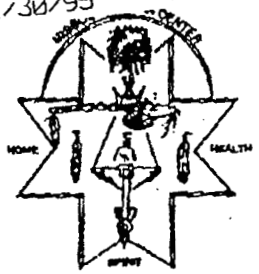
ULTIMATELY, ABUSED WOMEN MUST MAKE THEIR OWN DECISION ABOUT STAYING OR LEAVING. WOMEN ARE AT THE MOST DANGEROUS POINT WHEN THEY ATTEMPT TO LEAVE THEIR ABUSERS. RESEARCH INDICATES THAT

"WOMEN WHO LEAVE THEIR BATTERERS ARE AT A 75 PERCENT GREATER RISK OF BEING KILLED BY THE BATTERER THAN THOSE WHO STAY."[4] WE FULLY SUPPORT STRENGTHENING LAWS TO PROTECT DOMESTIC VIOLENCE VICTIMS.

WE BELIEVE THAT SB 278 AS ORIGINALLY INTRODUCED, WAS STRONGER THAN THE CURRENT VERSION, PARTICULARLY THE SECTIONS REFERENCING WEAPONS USE AND ASK THE COMMITTEE TO CONSIDER RESTORING THE ORIGINAL LANGUAGE. WE URGE THE COMMITTEE'S SUPPORT OF SB 278. THANK YOU.

With the Attorney General's Amendments.

[4] National Coalition Against Domestic Violence, 1990



MISSOULA INDIAN CENTER

2300 Regent St., Suite A • Missoula, MT 59801-7939
Telephone (406) 329-3373 • Fax (406) 329-3398

EXHIBIT 23
DATE 3/7/95
SB 278

January 30,1995

To whom it may concern,

This letter is in support of The Proposal, L. C. 265. I feel this proposal addresses many of the issues we are facing today, concerning domestic violence, in a more timely and appropriate manner than current laws in existence. Required counseling assessments prior to counseling can only help to insure more effective counseling . Expanding the definition of relationship to include in-laws and people who have parented children will help to reduce the barriers that prevent many people from accessing help through legal means.It will also help to reduce the overwhelming numbers of child abuse in this state through mandating better ways to deal with violent behavior. A lot of the violence among our youth today is because this behavior has been role-modeled in their home environment.
It is time for our state laws to take a more workable stand against violent acts perpetrated on one human being by another and see to it that people who are convicted of domestic violence receive the education they need to better communicate their feelings of frustration and anger. If a person is continuing to appear in court on domestic violence charges then apparently that person is not benefitting from the counseling and the criminal charges should be raised to a felony status. I feel the same way about TRO violations remaining misdemeanors after multiple violations. Most people have learned to be accountable for their behavior by the time they reach adulthood. Allowing continuing TRO violations to remain misdemeanors is allowing these people to thumb their noses at the entire legal system and endangering the lives of their victims. A third offense TRO violation should be raised to a felony status.

Sincerely,
Linda Hansen
Linda Hansen
Prevention Education Specialist

EXHIBIT 24
DATE 3/7/95
SB 228

In August of 1993, my ex-husband was returning my four children after a week-end visitation. I am the sole custodial parent. He has the first and third week-ends with the children. He entered my house against my request that he remain outside, he pushed me up against the wall, knocked me down....He hurt me badly so I called 911 for help. I was hurting, both physically and emtionally, and it came through clearly in the phone call. I ended up in emergency care. X-rays showed injury to my neck, arms, and back. On Monday morning, the next day, I went from the medical clinic to the police and requested a temporary restraining order. The judge granted the TRO. A date was set for hearing in September. At that hearing, my ex-husband showed up with his attorney. Unfortunately, no evidence was presented. I had my medical records with me, etc. The opposing attorney simply stood up and told the court that I might, sometime in the future, come to my ex's home or place of business and assault him, so a mutual restraining order was necessary. I had not been to his home or store in any of the years (1987 on) since the children and I had left him and did not intend to ever be near him at any time. Yet, I was not allowed to even protest --- a mutual restraining order was issued to my utter shock and amazement!

Looking at the preceeding, one could obviously assume a case of "sour grapes." Not so! I was married to this man from 1972 until 1991. We had five children. Some times were good, some times were horrible. He hit me, he broke bones, he threw me down stairs, ad nauseum. I loved him and I stayed with him. I dragged us from counselor to psychologist to psychiatrists, to marriage seminars, to family seminars.... to no avail. He would be kind for a period of time and then all hell would break loose again. I left him when he began hitting the children. The pattern of violence and pain had to stop!

I got my first restraining order in 1976. I fled with my infant daughter from Lewistown, Montana, to California to escape the pain. My ex followed me to California, convinced me that change was possible, and thus began the ride of counselors. I was forced to obtain multiple restraining orders over the following years, just to keep him away from me. He usually obeyed these orders. But once an order expired, I was facing violence again. We left him for good in the fall of 1987. In October of 1988, he attacked me in my home, severely injured me in front of all the children, and the summer of that year, he was found guilty of Domestic Abuse. He appealed to District Court and plead guilty there. He got a suspended sentence and a round of mandatory counseling. He'd seen enough therapists in the past so, of course, there was no significant changes.

With this brief history, it should be apparent that I needed and once again, applied for, a restraining order. I

had not gone to this man's home or office, entered it, and assulted him. He was at my home, hurting me, while the children cried. So, why the mutual restraining order in September of 1993? He had not requested this TRO. I had done so. Yes, there was a history of pain and anger and abuse. Yet, on the assumption that I "might" assault him at some time in the future, I was made equally guilty as he when the mutual restraining order was issued. Is this fair? Or is something wrong here?

In the year that followed the issuance of this order, I would receive numerous phone calls at odd times of the day or night. I would pick up the phone and my ex would tell me that we were not allowed verbal contact with each other as a result of the mutual restraining order. He would tell me that because I spoke to him (i.e. saying, "Hello!" when I picked up the phone) that he was going to "put me away for good this time" and that I was violating the court's order. He was allowed, by terms of the order, to call the children. However, most of the calls were placed when the children were either in school or in bed because it was so late at night. The harassment continued, I spoke to the police, and they recommended an answering machine to screen my calls. In the spring of 1994, I bought a machine. My ex was furious and accused me of trying to avoid him and keep the children from him, etc. etc. I was forced to change my life in other ways as a result of the mutual order. I changed my driving patterns so that I was never near his home or store, I hid in the house when he arrived to pick up our children for visitation, etc. ---- all because of his threats to get me in some violation of the order. It was a very paranoid way to live. He did, in fact, try to file some restraining order violations against me. My children and I were all forced to go to the police and each of us answer his so-called allegations. They did not hold up as a matter of fact. It was a bad year! Gary did violate the order and was charged with the violation.

Mine is not an isolated case. I was presumed to be as guilty as my ex because of the mutual restraining order. I was never given a chance to prove otherwise. I have heard many other cases (I volunteer at the Domestic Violence Assistance Center here in Missoula) where exactly the same thing occurred. It makes a person not want to ask for help because just the fact of asking for protection puts them in the position of having the tables turned on them. They end up as guilty as their abuser. This is very, very wrong and should <u>not</u> be allowed!!!

I am writing this as a means of protesting the court's handing down mutual restraining orders. It seems to have become almost routine practice for the courts to issue these orders in domestic violence and/or stalking cases. Such a ruling presumes that both parties at the restraining order hearings are equally guilty when, in fact, it is almost overwhelmingly one party, the injured party, who has applied for the relief afforded by these orders. Why should the innocent party be deemed as guilty as the offending party? It is my belief that only in very, very rare cases should a mutual restraining order be utilized by the courts. It appears that it is easier and less time-comsuming for the courts to simply issue these mutual orders rather than taking the time for a brief hearing where the parties could present their cases, where the injured party could present his/her evidence as to why they asked for a temporary restraining order in the first place and why they need to have this order continued, either permanently or for a year. By issuing mutual restraining orders, the courts are failing to protect those individuals who have come asking for their help.

Karin Diane Sellman-Nesse

1-1-95

EXHIBIT 25
DATE 3/7/95
SB 278

Theresa H. Troutman
303 Bannack Ct.
Missoula, MT 59801
Feb. 1, 1995

Dear Mr. Chairman,

I am writng this letter to you concerning Senate Bill 278. I strongly believe a third restraining order violation ought to constitute as a felony. I also believe making a restraining order mutual without having any basis of violence or intimidation to be unjust and unfair, if not ridiculous.

In September of 1993 I separated from my husband John. We had been married for 6 years. During our entire relationship of 8 years he had become violent with me on many occasions. 2 days before I left him he was particularily violent with me and was consequently arrested and convicted of domestic violence. To this day John thinks he was justified in his treatment towards myself.

For 2 months after our separation John threatened my welfare and my life. He followed me everywhere and called me on some days over 20 times. To say the least I was terrified and found it very difficult to go about my regular daily schedule of attending the University of Montana and taking care of our 2 children. I was increasingly worried about [redacted] our survival. I decided to get a restraining order. From day 1 John never took it seriously. I would see him outside my classes and he would follow me where ever I went. He was cited 4 times for violating the restraining order. Each time he was cited he would become more furious and become even more insistant and sneaky about how to come in contact with me. By March of 1994 I was a nervous wreck and I was increasinly frightened to stay at my home. On many occasions I took the children and went to stay where I knew John could not get to me. His threats and strange behavior and his past violence made me very aware of what he is capable of doing to me and my children. In June of 1994 he was convicted of violating the restaining order and because it was only a misdemeanor he was again warned to stay away from me and given a fine.

John's blatant disregard for the restraining order needs to be used as an example. Obviously to violate the restraining order brought on no dire consequences. None at all. I am fortunate in the fact that I was able to get away from John and keep myself and my family safe, but if John had been arrested and been tried for a felony instead of a misdemeanor then I would have been protected according to the law.

[illegible] the restraining order made mutual without any [illegible] to explain why. There was no justification or reason to

Respectfully,
Theresa H. Troutman

Theresa H. Troutman

EXHIBIT 26
DATE 3/7/95
SB 278

March 6, 1995

Dear Chairman Clark and Members of the House Judiciary Committee:

I am a native Montanan who has worked for the past nine years as a volunteer crisis counselor for several organizations opposed to domestic violence. I am also an attorney with eight years' experience representing protective parents of children at risk of abuse or neglect in custody cases. My experiences prompted me to write this testimony, to urge you to adopt Senate Bill 278 as enacted by the Senate. I am especially concerned about mutual protective orders.

Domestic violence is a serious health and social problem in the United States and in Montana. The only significant reduction in domestic violence seems to come from a consistent and firm message from the community that it is unacceptable behavior and will not be tolerated in a civilized society. Meaningful protective orders consistently enforced play an important role in carrying this message.

Mutual protective orders carry a different message, one that diffuses accountability and furthers the myth that both parties are in equal positions, so both are equally able to stop or prevent the violence. Such a message ensures that the violence will continue.

According to the AMA, domestic violence is the single largest cause of injury to women in the United States, exceeding car accidents, rapes, and muggings **combined.** Nearly four million women are injured by domestic violence each year.

One in six pregnant women are physically assaulted by their partners during pregnancy.

The Montana legislature created restraining orders to protect battered citizens from domestic partners, family members and former spouses. Mont. Code Ann. 40-4-121(3)(a). Violation of a restraining order is a misdemeanor, which provides the additional protections of the criminal justice system.

Some courts routinely issue mutual protective orders. This practice appeals to judges and lawyers because it saves time by avoiding show-cause hearings. But saving time at the expense of safety and lives of Montana citizens is misguided.

Often people who have been battered do not oppose mutual orders because they want to expedite the proceedings and avoid any further violent reactions from their abusers. Since they do not intend to commit acts of violence, they have no objection to a mutual protective order. They do not know that mutual protective orders do not protect effectively.

MUTUAL PROTECTIVE ORDERS DO NOT PROTECT VICTIMS OF DOMESTIC VIOLENCE

Mutual protective orders have harsh, unanticipated results. When police officers respond to a domestic violence call and discover a mutual, they may not know who has the actual history of battering. It may be unclear who the real victim is. They can only assume both parties have been violent. They may arrest both parties, even with no evidence of mutual abuse. This possibility will prevent many battered people from seeking much needed assistance from public safety officials. Or

police may decline to arrest either party, leaving the victim to face the batterer's retaliation alone.

Mutual orders and mutual arrest give the wrong message to both batterer and battered. They say the person who was battered is equally responsible for the violence. They absolve the batterer from responsibility and tacitly give permission for further battering.

MUTUAL PROTECTIVE ORDERS PERPETUATE DOMESTIC VIOLENCE

Mutual protective orders give the wrong message to victim and batterer alike. They create the impression that the battered person is equally responsible for the batterer's violent behavior, reinforcing a basic misconception held by many victims that they have either instigated or somehow deserve the abuse.

The abuser will interpret a mutual order as a message from the court that the batterer is not accountable and the battered person is as much to blame for the violence. Rather than helping to break the cycle of domestic abuse, mutual orders enhance the probability of future violence. The batterer must be held accountable and both parties must understand that violence is unacceptable.

Although many battered people do fight back against batterers, their actions are largely defensive and the effect is less severe than the batterer's violence. The critical question is which party truly needs protection.

The self-defense must not be equated with the violence initiated by the batterer. Equating self-defense and battering helps the batterer rationalize the defensive behavior of the battered person as justification for further battering.

Mutual orders can put the victim in a worse position than if there were no protective order at all. REPORT OF THE NEW YORK TASK FORCE ON WOMEN IN THE COURTS, 15 FORDHAM URB. L.J. 11 (1986-87). Mutual protective orders can make the battered person look equally violent in the eyes of the courts, and may make it harder to get a more restrictive order if the violence recurs.

The solution to domestic violence must involve increased concern and awareness of this serious problem. We can draw an analogy between this problem and the successful approach used to combat drunk driving. The combination of saturation education of people of all ages, innovative prevention, strict enforcement, and stringent punishment have had a dramatic impact on highway fatalities associated with drunk driving. *Developments in the Law: Legal Responses to Domestic Violence.* 106 Harvard Law Review 1505 (1993). The same approach can work with domestic violence.

Courts are the first line of defense. Courts must be aware of the negative impact mutual protective orders can have. People who have been battered must receive meaningful protection. Batterers must receive the clear, unequivocal message that their violence is unacceptable and will not be tolerated. Mutual orders accomplish neither.

Assault on a "loved one" is as unacceptable as any other form of assault. Inappropriate mutual orders further victimize and stigmatize the one battered and absolve the batterer of all accountability for the violence.

Mutual protective orders are appropriate only when each party petitions for protection and proves the other engaged in assaultive behavior. I urge you to adopt Senate Bill 278 as enacted by the Senate.

Respectfully submitted,

Gail Hammer

Gail Hammer
501 West Alder #B
Missoula, Montana 59802

YWCA

EXHIBIT 27
DATE 3/7/95
SB 278

1130 West Broadway
Missoula, MT 59802
(406) 543-6691

March 7, 1995

Dear Chairman Clark and members of the House Judiciary Committee:

I am writing in support of Senate Bill 278 and urge you to vote yes on this very important piece of legislation.

It is important that we have individual filing for TRO's. Currently, when "Jane Doe" files for a TRO, "John Doe" can also ask that it be made mutual at the same hearing. He is not asked for witnesses or documentation and his allegations do not have to be substantiated. He (and in some cases she) needs to go through the same process as his/her partner in filing for a TRO.

In changing the name Domestic Abuse to Partner/family member assault - I feel this is a more accurate description of events than Domestic Abuse. Domestic has many meanings and brings up many thoughts and feelings - warmth, home, comfort etc. Abuse also has many applications. This is almost an oxymoron. The word "domestic" minimizes the seriousness of this crime. There is no question as to the meaning of partner and family member assault. With the change in nomenclature - Domestic Violence is treated as any other assault to a person crime - as it should be.

Please vote for Senate Bill 278 as it was enacted by the Senate. Thank you for your time in considering this letter.

Sincerely,

Dodie Moquin

Dodie Moquin, Case Manager, Domestic Violence Assistance Center

EXHIBIT 28
DATE 3/7/95
SB 278

Testimony Supporting Senate Bill 278

March 7, 1995

Judy A. Williams, P.O. Box 3093, Billings, MT; (406) 252-6351.

Chairman Clark and members of the House Judiciary Committee:

Thank you for allowing me to speak to you today. My name is Judy Williams. I am from Billings: a 1977 graduate of MSU-Billings and a 1985 graduate of the University of Montana School of Law. Although I am currently working for the State Bar of Montana coordinating a pro bono project, the focus of my law practice with Montana Legal Services from 1985 - 1994 was representing victims of family violence.

First, I wish to note that I favor the proposed name changes in the bill before you: family or partner assault calls this crime by its proper name: assault. Order of protection, aside from being more descriptive, is specific. No one understands what preliminary injunctions are.

Although many aspects of the bill before you are noteworthy, the rest of my testimony will be confined to the issue of prohibiting mutual orders of protection, and the prohibition against arresting a petitioner for alleged violations of an order of protection. By adopting those two specific changes you will do much to improve the process of protecting family assault victims.

Too often, our over-worked and frustrated law enforcement personnel must answer family assault calls. Where a protective order is in place, the officer must decide whether there has been a violation and whether to make an arrest. Too often, the facts are muddled. Frequently, the respondent (restrained party) alleges that, although he may have violated an order, it was because of an invitation by the petitioner (victim). In too many cases for me to count, the victim is arrested by the officer. That should not happen.

Seeking protection from the Courts is one of the most difficult things a family assault victim ever does. It exposes a very private and usually embarrassing problem to others, often for the first time. Victims in need of protection are in no position to argue with a judge who often states it is the Court's policy to make protective orders mutual. But problems with mutual orders include:

1. Violation of Due Process: the opposing party/assaulter does not need to fill out the petition and affidavit the victim did, so the victim has no notice of the claims against her and no opportunity to defend herself against such claims.

2. If law enforcement assistance is necessary, responding

officers have difficulty determining who the real victim is when a protective order is mutual. On more than a few occasions in Billings, when confronted with such a dilemma, officers have arrested both parties, resulting in even more trauma to the real victim and any children, who find may themselves in foster care.

3. Mutual orders suggest that the victim is somehow responsible for what happened to her. The victim goes to the Court for help and is essentially told: we will give you an order for protection, but you have to live under the same restraints as the person who harmed you. In no other situation do we ask the harmed person to submit to such a condition of protection.

The absurdity of this is, perhaps, best illustrated by a short analogy. Imagine you are driving home today and you are hit by a drunk driver. Your car is demolished and you receive minor injuries. The other driver is arrested and charged with Driving Under the Influence of alcohol.

You go to Court to testify against the other driver, who is found guilty, loses her driver's license, and is ordered to pay you restitution for the damages to your car plus your medical expenses. After sentencing the drunk driver, the Judge turns to you and says: if you had not been on the street you would not have been in this accident. So that you will not be in another accident and you will take this situation seriously, you will also lose your driver's license for a year. This is essentially what happens when mutual restraining orders are issued. A victim proves to a judge she needs protection from a person and is told that, without any notice or evidence against her, she will also be restrained.

When the situation involves a family assault victim seeking protection, the circumstances are far more serious than in my illustration. A mutual restraining order also implies that the offender is not responsible for what he did.

Judges like mutual orders because many of them do not understand the dynamics of family violence and they think that the only goal of a retraining order is to keep the parties apart. The real goal is to protect someone from violence.

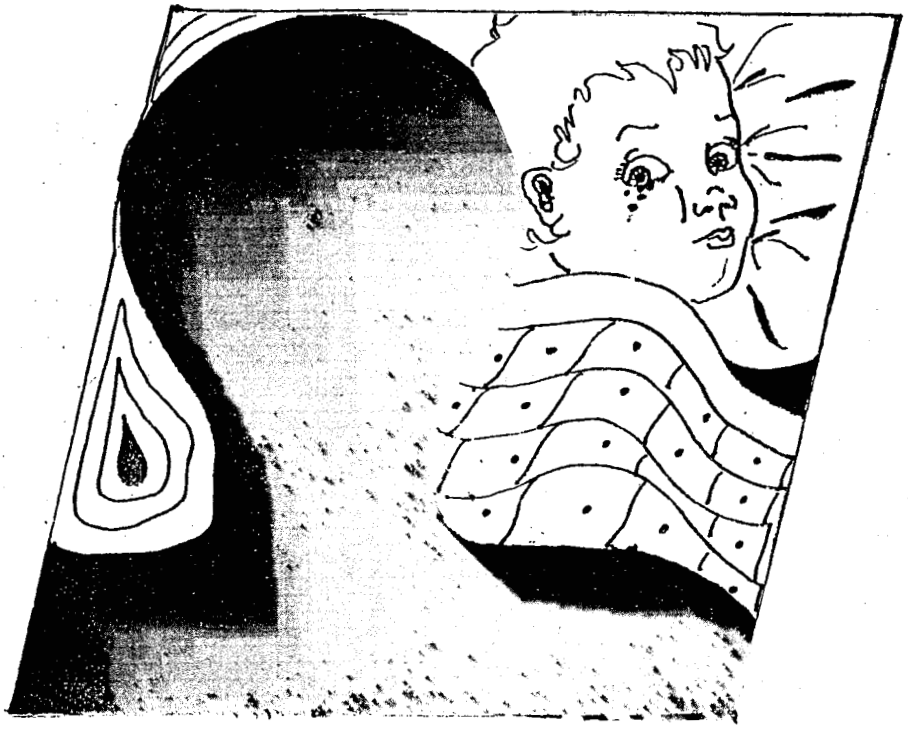
A mutual order is easy. It is also wrong. Sometimes the only way to right a wrong is to pass a law. This is one of those times. The only way for victims seeking self-help protection orders to avoid the mutual order trap is for you to legislate its prohibition.

I support SB 278 as transmitted from the Senate, and I urge you to pass this bill. Thank you.

EXHIBIT 29
DATE 3/7/95
SB 278

The real

MONSTERS



aren't under the bed

MACeM

MAJORITY AGAINST CHILD MOLESTATION

MESSAGE PHONE: 227-5173

IMPORTANT NOTICE

MACeM - Majority Against Child Molestation is a non-profit organization and support group who meet each Monday to offer support to families and individuals affected by molestation. If you or a loved one has been a victim, we are here to listen, to help and to work toward positive change.

We hope to work within the system to improve the laws. If justice has been denied you or your children and if you feel the system only works against you, please join us. We need your stories and your support. The only way we can stop the madness is by joining together and coming out from the shadows to be heard.

We are compiling a record of true life accounts of what happened to the victim and their attacker. The only way we are going to stop molesters from continuing the abuse is by joining together and working for our rights. Please help us make a change.

WHEN: Every Monday at 7:00 p.m.
WHERE: Helena Housing Authority Office
812 Abbey Street
Helena, MT

If you have any questions, please call Sharon at 227-7043 or Connie at 458-4754 or write to MACeM, P.O. Box 1003, East Helena, MT 59635.

We will respect your right to privacy.

CLUES TO POSSIBLE VICTIMIZATION

Sometimes children don't tell us they are in crisis, they show us. A change in a child's behavior could be due to the stress of being abused. These changes in behavior can alert adults to their problem.

Abuse and neglect can also sometimes leave physical marks on a child's body which adults can observe. Knowing both the physical and behavioral clues to abuse can help adults intervene on behalf of children.

Keep in mind that some clues can be normal behavior for a given child at a given time. Therefore it is important to be aware of new behaviors, extreme behaviors, or combinations of the following characteristics.

Abused children can not be identified by racial, ethnic, religious or socioeconomic class. Abuse crosses these lines.

Abused Children Are Often	• fearful of interpersonal relationships or overly compliant • withdrawn or aggressive, hyperactive • constantly irritable or listless, detached • affectionless or overly affectionate (misconstrued as seduction)
Physical Symptoms	• bruises, burns, scars, welts, broken bones, continuing or unexplainable injuries • urinary infections (particularly in young children) • sexually transmitted diseases • chronic ailments, stomachaches, vomiting, eating disorders, vaginal or anal soreness, bleeding, or itching
Activity and Habit Clues	• nightmares • inappropriate masturbation • a child afraid to go home or to some other location, running away • delinquency • fear of being with a particular person • lying • prostitution
Age Inappropriate Behavior	• an onset of thumb sucking • sexually active or aware • promiscuity • bed wetting • alcohol/substance abuse • older child assaulting younger children • child takes on adult responsibilities
Educational Concerns	• extreme curiosity, imagination • academic failure • sleeping in class • inability to concentrate
Emotional Indicators	• depression • phobias, fear of darkness, public restrooms, etc. • chronic ailments • self-inflicted injuries • injuring/killing animals • excessively fearful • lack of spontaneity, creativity

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE

BILL NO SB 278 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Chuck O'Reilly	MT Sheriffs & Peace Officers Assn	Amend Support	
Kelly Slattery-Robinson	YWCA D.V.A.C. - Missoula	✓	
PATRINA SIMS	MC FAM Violence Council	✓	
Mary Grady	Private Citizen	✓	
Holly Franz	Women's Law Section of the State Bar of Montana	✓	
DIANE TRIPP	Missoula Family Violence Council	✓	
Judy Jang	Missoula City Attorney's Office Missoula Family Violence Council	✓	
Amy Pfeifer	Women's Law Section State Bar of Montana	✓	
SHARON HOFF	MT CATHOLIC CONF	✓	
John Connor	Dept of Justice MT County Attys Assn	✓	
Kate Cholewa	MT Womens Lobby	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 3/7/95

BILL NO. SB 278 SPONSOR(S) Sen. Brooke

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Jim Oberhofer	MT Chiefs of Police	X	
Ron Ashabranner	State Farm Ins	✓	
Seth Bakes	Dept of Justice	✓	
Mary Alice Cook	adv. for MT's Children	✓	
Cathy Kendall	Board of Crime Control	✓	
CC: IBSEN	SEN	✓	
Jim Neumayer	Msla. Police	✓	
Janet Cahill	MT Coalition Against Domestic	✓	
Mark Muir	MT. POLICE ASSN	✓	
Monica A Bottrell	self	✓	
LAURETTA ADOLPH	Bigs Area Family Violence Task	Force	
JAN HEALY	Bigs Area Family Violence Task	Force	
Jacqueline Denmark	HM. Dis. Ass'n	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 3/9/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	~~✓~~		✓
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓ 9:15	~~✓~~	
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ 9:16	~~✓~~	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HOUSE STANDING COMMITTEE REPORT

March 13, 1995

Mr. Speaker: We, the committee on **Judiciary** report that **Senate Bill 278** (third reading copy -- blue) **be concurred in**.

Signed: Bob Clark

Bob Clark, Chair

Carried by: Rep. Grimes

Committee Vote:
Yes 18, No 0.

581319SC.Hbk

3/13

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3-9-95

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Chairman Clark.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
SB 178	✓	
AMENDMENTS		✓

SENATE BILL/AMENDMENT	AYE	NO

Rep. Lloyd W. Anderson
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3-9-95

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Chris Mixer.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment**.

HOUSE BILL/AMENDMENT	AYE	NO

SENATE BILL/AMENDMENT	AYE	NO
SB 145		X
SB 278	X	
Amendments	1	X

Rep. Chris Truitt
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE 3-9-95

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Bob Clark.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are **amendments**, list them **by name and number** under the bill and indicate a **separate vote for each amendment**.

Senate Bill

~~HOUSE BILL~~/AMENDMENT	AYE	NO
13	X	
64	X	
66	X	
77		X
90	X	
109	X	
113	X	
143	X	
165	X	
175		X
185	X	

SENATE BILL/AMENDMENT	AYE	NO
189	X	
192	X	
211	X	
212	X	
218		
272	X	
278 as is	X	
286	X	
297	X	
340	X	
402	X	
517		X

Please hold off on 372 until I get some questions answered. Thanks.

Rep. Chris Ahner
(Signature)

HR:1993
WP/PROXY

HOUSE OF REPRESENTATIVES
COMMITTEE PROXY

DATE March 9

I request to be excused from the Judiciary Committee meeting this date because of other commitments. I desire to leave my proxy vote with Bob Clark.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

~~HOUSE~~ BILL/AMENDMENT	AYE	NO
SB 133	X	
SB 212	X	
" 66	X	
" 174		X
" 272	X	
" 291	X	
" 206		X

SENATE BILL/AMENDMENT	AYE	NO
SB 278	X	
No to any new Amendments		
SB 175		X
" 372 ?		
" 340	X	
Amendments ?		
SB 77		X
" 64	X	
" 113	X	
109	X	

Rep. Ellen Bergman
(Signature)

HR:1993
WP/PROXY

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on March 9, 1995, at 8:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: Rep. William Boharski

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 175, SB 372	
Executive Action:	SB 286	BE CONCURRED IN
	SB 211	BE CONCURRED IN AS AMENDED
	SB 278	BE CONCURRED IN
	HB 517	DO PASS AS AMENDED
	SB 175	TABLE
	SB 372	POSTPONE ACTION

don't want treatment, they then face incarceration and he said that is what the bill is about.

EXECUTIVE ACTION ON SB 278

Motion: **REP. DIANA WYATT MOVED SB 278 BE CONCURRED IN.**

Motion: **REP. KOTTEL MOVED TO AMEND SB 278. EXHIBIT 7**

Discussion: **REP. KOTTEL** discussed and explained the amendments which addressed the question of removal of all firearms from the premises in a domestic disturbance situation. The intent of the amendment was to allow the law enforcement officers discretion in taking the weapons if they deem necessary for the protection of the persons involved.

REP. DUANE GRIMES said he spoke to the sponsor of the bill about the amendments. Though he thought the bill could be better written, he believed the committee should act upon the bill as proposed. He remembered from testimony at the hearing that this issue was not a strong problem.

REP. BRAD MOLNAR asked if a law enforcement officer operated under the bill as written and felt it was necessary to remove more than one weapon from the scene, would that officer have the discretion to do so.

CHAIRMAN CLARK answered that they would not under statute. He said there was a problem in responding to a domestic disturbance in that the firearm or weapon used would be taken as evidence. The others would be taken if the officer felt it would be safer for the victim not to have them around especially if the perpetrator were turned loose. However, if there is an intent to kill someone, many things can be used as a weapon such as a front bumper of a vehicle, kitchen utilities or even panty hose. Most law enforcement officers would feel that taking the weapon used in the assault would be satisfactory.

REP. MOLNAR asked if the other firearms were taken, where they would be held and when they would be returned.

CHAIRMAN CLARK said that would be up to the judge. Usually when the case is settled satisfactorily and the person not convicted of a felony, the guns would be returned.

REP. KOTTEL felt the person would have to maintain their anger longer in the use of other weapons. Though she partially agreed with **REP. GRIMES**, she felt that if there were going to be other amendments proposed and agreed to, she wanted the amendment she proposed to be considered as well. Therefore, she withdrew the motion to amend.

REP. MOLNAR discussed a conceptual amendment based on a concern that the request for a restraining order could be honored without a charge filed.

Motion: REP. MOLNAR MOVED TO AMEND BY STRIKING THE PORTION ABOUT THE CHARGES FILED AND THE PARTICIPATION IN A CRIMINAL PROSECUTION, ON LINES 13 - 15, PAGE 20.

Discussion: REP. WYATT reminded the committee that this bill dealt with domestic abuse and not just someone off the street committing the offenses. For that reason she did not think they would want to force people to make criminal charges against members of their family before they could get a restraining order.

REP. KOTTEL spoke as a strong proponent of the bill and having experience working with victims of domestic abuse. She said it was a struggle to get the victims to use even the civil remedies available to them to protect themselves. She strongly opposed the amendment.

REP. MOLNAR asked if it was true that people currently get restraining orders on spouses. The answer being in the affirmative, he stated that in those cases, it did not always end in a criminal charge.

REP. KOTTEL said it was true but clarified the difference between a temporary restraining order (TRO) issued at the justice of the peace (JP) level and one issued as the district court level and the difference between the ex parte TRO with a later hearing.

REP. MOLNAR asked if it was not true that it is not necessarily family members but whoever the petitioner would consider as their partner.

REP. WYATT said that was true, but that it was hard for those who had not had relationships with others which involved repetitive abusive elements to understand that they believe they deserve to be abused. Emotionally they do not have the capacity to leave the situation. She said this would impose upon them the demand to do something they are not capable of doing since they are not even capable of defending themselves or their children.

REP. MOLNAR believed that the TRO needed to include the criminal charges in order to prevent repetition of the crime.

REP. WYATT said that if this law were to make it more criminal and threatening to do the thing they currently seldom do, the opportunity would be to make things worse for the victim.

REP. MOLNAR asserted that it would not change since it is the law now that they must press the charge.

CHAIRMAN CLARK disagreed and pointed out that they were dealing with TRO's in this section and that would not change what he was trying to do. It would not force anyone to file charges. The county attorney makes the final decision on that anyway. He did not believe the amendment would clear up anything with this bill. What he was talking about was already covered under other existing statutes.

REP. MOLNAR withdrew his amendment. He questioned the testimony in the hearing which was that TRO's would be restricted to the first party to appear to request one.

REP. KOTTEL read portions of 40-4-101, MCA, and could find no such restriction in current law dealing with TRO's.

Without objection from the committee, **Diane Tripp** responded to the question. She said that it was not saying that the party could not get a TRO or an order of protection, but it was saying that the other person has to go through the same sort of procedure. Currently the victim would have to request a TRO and go to court and the judge would grant both parties TROs. She was protesting that if in fact the other person was a victim, they needed to request the TRO in the same manner the first person did.

REP. MC GEE expressed concern about the title calling it family member assault or partner assault. He wanted to strike that wording and insert that it was domestic assault and he explained that his logic included the common usage of the terms.

REP. MC GEE said he really did not see the need for the legislation. He asserted that there were existing laws to cover assault whether it was committed against a stranger or a family member. He was concerned that it was a "feel-good" measure. He continued by giving his personal perspective of this issue. He objected to the perspective of the bill being slanted toward the feminine gender.

REP. GRIMES said that he was concerned about being clear about what they would be doing with this bill. Testimony was that 70% of the people on welfare are women who had come from domestic abuse situations. He sensed that this is a big problem in society and he observed that on first and second offenses very little is done while at the third offense they go before the judge and are surprised at his treating them as if they had done something wrong. He felt the bill would communicate on the first offense that they had committed a crime and that correction of the behavior was needed. He felt that domestic assault was more appropriate and stronger wording, but he did not feel that changing the words was sufficiently important to send the bill back to the Senate.

REP. MC GEE suggested that if **REP. KOTTEL** chose to move her amendments again, she incorporate the change in the wording.

REP. KOTTEL said that the numbers of women committing this type of crime is on the rise and as well, children abusing elderly parents was increasing. She said the reason the title was changed was that domestic abuse irrevocably is aligned in people's minds as men abusing women. To change it to family and partner was to move it away from the idea of women being the victims and would more clearly protect family members from each other.

REP. LIZ SMITH commented on addressing it as domestic assault. She urged the passage of the bill as proposed to communicate a strong message to society that it is unacceptable behavior.

CHAIRMAN CLARK clarified that **REPS. KOTTEL** and **MOLNAR** had withdrawn their amendments and that **REP. MC GEE** had not moved his amendment.

Motion: REP. KOTTEL MOVED THE ORIGINAL AMENDMENTS. (EXHIBIT 7)

Discussion: REP. KOTTEL mentioned the objection of law enforcement officers to leaving the wording in the bill relating to removal of the weapon used in the assault.

CHAIRMAN CLARK asked if the law enforcement officer she had spoken to felt the bill would be dangerous without the amendments.

REP. KOTTEL said the bill as originally submitted was supported, but the bill as amended by the Senate which would only allow the police officer to take the weapon would put them in a dangerous position and, therefore, they supported these proposed amendments to allow the officer discretion at the scene.

The committee objected to testimony from outside the committee.

{Tape: 2; Side: A}

REP. WYATT opposed the amendments believing it was best to keep the bill as clean as possible and that weapons were not confined to firearms.

REP. MC GEE approved of the amendments because he believed the officer should be given the discretion to remove any weapons.

REP. GRIMES understood that if the amendments were added they could be used politically in the Senate. He said that if corrections need to be made, they should be done during the next session rather than risk losing the legislation.

REP. KOTTEL discussed her understanding about the opposition to the bill being only in this wording. Originally it mandated that officers remove all weapons. With the amendment limiting seizure to the weapon it passed the Senate. In hindsight, the county

attorneys said that put them in a dangerous position of not being able to protect the victim. She did not believe that the bill would be risked with this amendment, but simply be reverted to the language as it came out of the Senate. She gave her opinion about the political ramifications with the gun language in it.

CHAIRMAN CLARK opposed the amendments and agreed with **REP. GRIMES** and gave his reasons believing the law enforcement officers were not concerned with the language of the bill limiting it to the weapon.

Vote: The motion failed by voice vote, 2 - 16 REPS. KOTTEL and MC GEE voted aye.

Motion: REP. MC GEE MOVED TO AMEND THE TITLE AND THE BODY OF THE BILL TO DOMESTIC ASSAULT FROM PARTNER AND FAMILY MEMBER ASSAULT.

Discussion: REP. CLIFF TREXLER opposed the amendment for the same reasons which **REP. GRIMES** had given twice.

REP. AUBYN CURTISS asked if the sponsor of the amendment thought it was important enough to put it in conference committee.

REP. MC GEE withdrew his motion.

Vote: The motion to concur in SB 278 passed unanimously.

EXECUTIVE ACTION ON HB 517

Motion: REP. WYATT MOVED HB 517 DO PASS.

Discussion: REP. TREXLER questioned how attorney fees are handled under this bill.

REP. KOTTEL said usually the plaintiff enters into a contingent fee agreement with their counsel and they will pay the attorney a percentage out of the judgment. The attorney would not have any right to any percentage of the interest because the interest would not go to their client but rather to the state.

REP. TREXLER asked if in this case the loser "may" pay 10% to the plaintiff and 10% to the state.

REP. KOTTEL explained why that was not true.

REP. MC GEE asked how this would streamline the judiciary.

REP. KOTTEL explained.

{Tape: 2; Side: A; Approx. Counter: 16.4}